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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. ——

NORTHERN LINES MERGER CASE[1]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court is not yet reported (App. A, App. pp. 1–58; the court's subsequent order making corrections therein is set forth in App. G).[2] The several decisions of the Interstate Commerce Commission, copies of which are included in the Appendix hereto, are reported at 328 I.C.C. 460, 331 I.C.C. 228, 331 I.C.C. 869, and 333 I.C.C. 391.

JURISDICTION

The order of the three-judge district court denying an injunction against the Commission orders in issue was entered November 20, 1968 (App. B, App. pp. 59–60). A notice of appeal was filed December 5, 1968.

[1] *United States of America* v. *Interstate Commerce Commission, Great Northern Railway Company, et al.*

[2] Appendices A–F are separately bound, and pages therein are cited as "App. p." Appendix G is at page 29, *infra*.

The jurisdiction of this Court is conferred by 28 U.S.C. 1253 and 2325. *B. & O. R. Co.* v. *United States,* 386 U.S. 372.

QUESTION PRESENTED

Whether the Interstate Commerce Commission's approval of the merger of the Great Northern and Northern Pacific railroads and their railroad subsidiaries is supported by a convincing showing that benefits to the public interest outweigh the elimination of substantial rail competition in the Northern Tier of the United States.

STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding Section 1, is as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway,

and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 5(2) of the Interstate Commerce Act, 49 U.S.C. 5(2), provides as follows in pertinent part:

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; * * *

* * * * *

(b) * * * If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: * * *

(c) In passing upon any proposed transaction under the provisions of this paragraph,

the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

STATEMENT

In this proceeding the United States seeks judicial review of orders of the Interstate Commerce Commission which reversed a prior decision of that agency and approved a rail merger proposal of vast scope in the northwestern United States. The Commission's orders have been sustained by unanimous decision of the three-judge district court convened to hear the case pursuant to 28 U.S.C. 2325 and 2284. The effectiveness of the merger has been stayed, the stay currently in effect having been granted by this Court on December 16, 1968.

1. THE FACTS

A. THE MERGING RAILROADS

On February 17, 1961, several major railroads in the northwestern United States applied to the Interstate Commerce Commission for authority to merge. The three principal applicants were the Great Northern Railway Company ("Great Northern") and the Northern Pacific Railway Company ("Northern Pacific"), together known as the Northern Lines, and

their jointly-owned subsidiary, the Chicago, Burlington & Quincy Railroad Company ("Burlington"). The other railroad applicants were the Spokane, Portland and Seattle Railway Company ("SP&S"), owned by the Northern Lines jointly, and the Pacific Coast Railroad Company ("Pacific Coast"), a subsidiary of the Great Northern (App. pp. 66, 248).

Under the applicants' proposal, the Northern Lines, the Burlington and Pacific Coast would be merged into a new company, which would acquire the subsidiaries of the merged companies as well as all their leasehold, trackage and joint use rights in the lines of other carriers and the terminals incidential thereto. The new company would lease the SP&S and thereby acquire that company's subsidiaries and trackage rights. The applicants also sought Commission authorization for the issuance of stock and securities, assumption of obligations, abandonment and construction of lines, and other authority necessary to effectuate the merger.

The Great Northern operates across the Northern Tier of states (Minnesota, North Dakota, Montana, Idaho and Washington) between Duluth and the Twin Cities and Seattle, Portland and Vancouver. The Northern Pacific operates across the same territory over routes lying somewhat to the south of the Great Northern's lines. Since the Northern Lines serve "the same Pacific ports, the same lake ports, the same large eastern terminals, and the same tier of States over parallel lines, each line is the most aggressive and important competitor of the other" (App. p. 73; see App. p. 254).

The routes of the Burlington extend from Chicago to the Twin Cities and to points in the Midwest, and by subsidiaries, reach the Gulf of Mexico. "There is no substantial competition . . . between either of the Northern Lines and the Burlington, since the latter's lines are in great part complementary to those of its parents" (App. p. 254).

The main line of the SP&S provides the most direct route from Spokane to Portland and is of strategic importance to the Northern Lines, since Spokane lies on their main transcontinental routes and Portland is an important terminal for both of them (App. p. 72). The Pacific Coast is a relatively short line in King County, Washington.

The principal applicants—the Great Northern, the Northern Pacific and the Burlington—are large, strong and prosperous railroads (App. p. 78). The resulting company would constitute one of the largest rail systems in the nation, with nearly 27,000 miles of track extending from the Great Lakes across the Northern Tier to the Pacific Coast and, through affiliates, to the Gulf of Mexico (App. p. 252). It would enjoy assets of nearly $3 billion, annual railway operating revenues of $823 million, annual railway operating income of $95 million, and total annual income of $131 million (App. pp. 282, 428).

B. RAIL COMPETITION IN NORTHERN TIER

The Great Northern and the Northern Pacific have been each other's principal competitors in the Northern Tier for over half a century.[3] They are directly

[3] One of their earlier attempts to merge was set aside by this Court as a violation of the Sherman Act. *Northern Securities*

competitive at points accounting for about 43 percent of their gross revenues and 34 percent of their total tonnage, and compete also for overhead traffic (*i.e.*, traffic not originating or terminating on their systems) which accounts for an additional 12 percent of their revenues (App. p. 145).

The Northern Tier region served by the Northern Lines is rich in forest, agricultural and mineral products which in 1963 accounted for 65 percent of Great Northern's carload revenue and 58 percent of that of the Northern Pacific (App. p. 75). The long-haul transportation of these products is generally not attractive to motor carriers, and water transportation is not a major factor in the area (App. pp. 138–139). For these reasons, rail transportation is "of primary importance" in the Northern Tier (App. p. 253; see App. p. 77).

The Northern Lines' principal competitor is the Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee"), whose routes extend from Chicago northwest via the Twin Cities to Seattle, Tacoma and Longview, Washington. The Milwaukee was built after the *Northern Securities* case, *supra* n. 3, was decided, primarily to compete with the Northern Lines, but it has not become a major rate-making transcontinental railroad of substantial competitive significance. Compared with the Northern Lines, the Milwaukee has been an extremely weak carrier. In 1964 it carried only 12 percent of east-west traffic to and from the Pacific Northwest moving through four

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Co. v. *United States*, 193 U.S. 197. Other efforts to merge the Northern Lines are summarized at App. pp. 150–154.

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representative gateways, while the Northern Lines carried over 60 percent (App. p. 145). Its net income has always been much smaller than that of either the Northern Lines or the Burlington. The combined 1965 net income of the three major applicants ($81.6 million) was eleven times greater than the Milwaukee's ($7.3 million), and the combined net income of the Northern Lines alone ($64.9 million) was eight times greater (App. p. 105).

2. THE COMMISSION'S 1966 DECISION

Following public hearings in 1961–1962 in which the Department of Justice and other intervenors actively participated, the hearing examiner in 1964 submitted a report recommending approval of the merger. In a decision rendered on March 31, 1966 (328 I.C.C. 460, App. C, App. pp. 61–244, hereafter the "First Report"), the Commission (6–5) concluded that the merger, even with appropriate conditions,[4] would not be consistent with the public interest and denied the applications. While recognizing that consolidation would produce certain operating efficiencies and make possible savings to the applicants of $25.5 million a year by the tenth year after merger, the Commission found "that the disadvantages of an appropriately conditioned merger—a drastic lessening of competition and adverse effects on carrier employees—outweigh the benefits that might be derived by applicants and the shipping public" (App. pp. 166–167).

[4] In passing upon rail unification proposals, the Commission is expressly empowered to impose "such terms and conditions * * * as it shall find to be just and reasonable" (49 U.S.C. 5(2)(b)).

The First Report's central findings with respect to the competitive effects of the merger may be summarized as follows:

First, the Commission held that it should focus its competitive analysis on the Northern Tier states in which the Northern Lines operate because "this is the area where vigorous intramodal competition exists and is threatened" (App. p. 143); the Burlington, the other principal applicant, serves a different area (App. p. 73) in which the merger will have little competitive impact.

Second, the Commission found that, in the Northern Tier, the Northern Lines were engaged in extensive direct competition at common points and for overhead traffic which account for 55 percent of their revenues (App. p. 145).

Third, the Commission found that competition between the Northern Lines affected a vast amount of transport, since they carry some 83 percent of the eastbound and 61 percent of the westbound traffic between the Northwest and the Twin Cities moving through four representative gateways. (App. p. 146).[5]

Fourth, the Commission found that the long-haul bulk cargo transportation of the Northern Tier's main products, which generated most of the Northern Lines' revenue, was not generally susceptible of diversion to

[5] This finding is of manifest importance. Two merging railroads might compete directly with each other at stations accounting for 100 percent of their revenue, but if together they carried only 1 percent of rail traffic in their area, their merger would have a negligible effect on competition. Here, not only are the Northern Lines directly competitive at many points, but they also dominate rail transport in the area they serve.

other modes; hence, the preservation of rail competition between the Northern Lines was of special importance (App. p. 165).

Fifth, while recognizing that the Milwaukee could be strengthened by attaching conditions to the merger, the Commission found that its *relative* competitive position after merger would be worse. The conditions included the opening of 11 gateways (*i.e.*, the establishment of through-routes with the Northern Lines through 11 interchange points so as to give Milwaukee an opportunity to solicit for the longest possible haul); and a grant of entry into Portland where it could connect with Pacific Coast carriers. Despite the grant of the crucial gateway and Portland access conditions, however, the Commission concluded that if the merger were approved "there would be one very large and strong railroad and one relatively weak carrier, whereas there are today two strong rail carriers and one relatively weak carrier" (App. p. 164).

The Commission recognized that both shippers and the applicants would derive some benefits from improved routing and monetary savings (chiefly through job reduction) which the merger might ultimately produce. But it observed that vigorous competition between the Northern Lines has spurred them to provide improved service to the public and that their financial strength enables them to continue to do so (App. p. 166, 158). The Commission concluded, therefore, that the applicants had not demonstrated merger benefits of such scope and importance as to outweigh drastic lessening of rail competition in the Northern Tier.

3. THE 1967 DECISION ON RECONSIDERATION

On July 27, 1966, the applicants petitioned for reconsideration, asserting that they were willing to accept all the protective conditions sought by the Milwaukee and by another affected road, the Chicago and North Western Railway ("North Western");[6] that they would enter into attrition agreements for the protection of their employees; and that the merger would yield savings greater than estimated in the First Report. While the petition was pending, the applicants and the Milwaukee entered into an agreement (Ex. No. 250) which provided that the Milwaukee would receive all the conditions it was seeking and accordingly would withdraw its opposition to the merger. The agreement also provided that the Northern Lines would not oppose Commission authorization of the Milwaukee-North Western merger then and now pending before the agency, and would seek only standard protective conditions in that proceeding.[7] A similar agreement was concluded with the North Western (Ex. No. 251). Thereafter, the Milwaukee and the North Western withdrew their opposition to the Northern Lines merger and urged the Commission to approve it.

On January 4, 1967, the Commission reopened the proceeding for reconsideration and limited further

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[6] The North Western is a "relatively short haul carrier" that serves primarily Wisconsin, Iowa, Minnesota, South Dakota, Nebraska and Illinois (App. p. 94).

[7] On December 18, 1968, a Commission hearing examiner recommended approval of the proposed Milwaukee-North Western merger. ICC Financial Dockets Nos. 24182 *et al.*

hearing. The hearing occupied four days and was confined to the question of savings resulting from the merger in the light of the applicants' agreements with the Milwaukee and the North Western and changes which had occurred on the systems of the merging lines since the close of the hearings in June 1962.

On November 30, 1967, the Commission (8–2) reversed its prior ruling and approved the merger (331 I.C.C. 228, App. D, App. pp. 245–462, hereafter the "Second Report"). It held that the prior report had failed to recognize Section 5's affirmative purpose to encourage mergers consistent with the public interest, and that this error had contributed materially to the result there reached (App. p. 312).

With respect to the basic issue of loss of competition, the Commission concluded that it should focus on "the competitive effects systemwide, *i.e.*, beyond the four northern tier States," including the vast area served by the Burlington (App. p. 317). It did not reject the findings of the First Report, nor had it received any new record evidence on competition. Instead, it simply stressed the obverse of the systemwide measures of loss of intramodal competition previously developed, noted generally that intermodal competition was more significant today than in earlier years, and changed from its prior emphasis on measures of competition for the traffic carried to a generalized emphasis on the number of carriers serving the various points on the lines (App. pp. 316–318). Thus, the Commission now relied heavily upon a table showing the number of railroads, truck lines, bus lines and air lines at ten selected cities in the applicants' territory,

five of them not in the Northern Tier (App. p. 318) and, without further analysis, declared that the data showed that, "at the commercially most significant points in the applicants' territory, there is . . . substantial intermodal and intramodal competition" (*ibid.*).

With respect to the Milwaukee, the Commission concluded that, unless the merger with its attached conditions were approved, the Milwaukee would be relegated "to an increasingly marginal and deteriorating role," while "on the other hand, a properly conditioned merger, with [the new company] competing against a strengthened Milwaukee, will serve to achieve a more desirable competitive pattern" (App. p. 321). It presented neither new evidence nor new analysis to explain this stark reversal of its position in the First Report.

Apart from its conclusion that the merger would probably result in greater savings to the parties than had originally been estimated (App. pp. 298–305) and its discussion of the Milwaukee, the Commission found no benefits from the merger that had not been considered in the First Report.[8] These benefits were aptly summarized in the Commission's conclusion that the combination of the applicants would result in "a more proficient transport agency" (App. p. 344). They include "faster and more dependable single line service" (App. pp. 305–306) [although the First Report had pointed out that "competition has already produced

[8] The Commission did, however, conclude that the hardships to employees that had earlier been of concern would be relieved by conditions since agreed to. (App. p. 343).

faster transcontinental freight train schedules than the schedules originally proposed by applicants" (App. p. 162)]; improved tracing and location of shipments (App. p. 308) [although the First Report found that the improvement would not be material in light of the improvements that computerization would permit in any event (App. p. 162)]; improved freight car utilization (App. p. 309) [which the First Report found "counteracted by the loss of competition which now spurs applicants to meet the demands of the shippers at common points" (App. p. 162)]; reduced damage from handling and improved handling of claims (App. pp. 308–309) [which the First Report found "too insignificant" to consider (App. p. 162)]; and a generally expanded routing with better transit and diversion privileges for shippers (App. p. 305) [which the First Report had also taken into account (App. pp. 161–162)].

In a subsequent report dated April 11, 1968 (331 I.C.C. 869, App. E, App. pp. 463–497), the Commission modified one of the Milwaukee conditions and denied all petitions for reconsideration. In a further report dated June 17, 1968 (333 I.C.C. 391, App. F, App. pp. 498–503), the Commission disclosed that the Milwaukee and the Northern Lines had apparently intended that the eleven Milwaukee gateways not be opened to the vital grain traffic of the Northern Tier. Holding that the strengthening of the Milwaukee was a *sine qua non* of its approval of the merger, the Commission ruled that its gateway condition was unrestricted.

4. THE DECISION OF THE DISTRICT COURT

On May 9, 1968, the United States filed a complaint challenging the Commission orders approving the merger,[9] and on November 20, 1968, a three-judge court (Bazelon, Fahy and Curran, JJ.) unanimously affirmed the Commission's determination and dismissed the complaint (Apps. A, B).

The court rejected the government's argument that the Commission had construed Section 5 as establishing a presumption in favor of mergers: "While the Commission interpreted the national policy as encouraging mergers, we do not think it was guided by a presumption" (App. p. 21). It concluded, on the basis of the Second Report's analysis of the points at which the applicant railroads compete directly, that the Commission had adequately analyzed intramodal competition and that the factors considered by the Commission were "broadly indicative of the weakness of the Department of Justice's emphasis on raw statistics" (App. p. 24).

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[9] Two other suits challenging the orders in issue were instituted in federal district courts in New York and Washington; the plaintiffs in those cases intervened in the government action. The intervenor-plaintiffs include the Northern Pacific Stockholders Protective Committee, the Board of Railroad Commissioners of the State of Montana, the State of Washington, the City of Auburn, Washington, and the Livingston Antimerger Committee. A motion for leave to intervene was filed by the Public Service Commission of Minnesota but it took no part in the proceedings.

The applicant railroads, the Milwaukee, 230 Pacific Northwest Shippers and the Public Utility Commissioner of Oregon intervened as defendants in support of the Commission.

The court rejected the government's argument that the Commission had erred in failing to analyze adequately the relative competitive strengths of the Milwaukee and the applicants after the merger, holding that the evidence supported the Commission's conclusion that the Milwaukee would be an enhanced competitor. It viewed this conclusion narrowly, however, not as a finding of "an over-all enhancement of competition but rather an enhancement of the competitive situation of Milwaukee in relation to Northern Lines" (App. p. 30, n. 15). It found it unnecessary to reach a decision on the government's contention that the Milwaukee could have been strengthened by means other than the merger, holding that "the fact that some of those benefits might possibly otherwise have been obtained hardly detracts from the actual advantage of the present conditions, if, as we believe, they give support to the Commission's findings that the merger is consistent with the public interest" (App. p. 34).

Turning to intermodal competition, the court found that there was substantial evidence to support the Commission's conclusion in the Second Report that actual and potential intermodal competition was great enough to "justify the reduction or elimination of inter-railroad competition" (App. pp. 36–37). This consisted of general testimony that motor carriers were cutting into the rail traffic in many products, that Class I motor carriers operating in the merger territory had an average length of haul longer than

the average for either of the Northern Lines; and that new highways would shorten truck time between the Northwest and the Twin Cities. The court did not discuss the Commission's finding that the Northern Tier produces large quantities of low-rated high-volume bulk commodities which are not generally attractive to motor carriers.

Accordingly, the district court found that the Commission had properly concluded that "the competitive situation which will result from the merger is consistent with the public interest * * *" (App. pp. 37–38). The court also disposed of other contentions advanced by the government and intervenors that are not raised on this appeal.

THE QUESTION IS SUBSTANTIAL

The merger of the Northern Lines and the associated railroads involved in this proceeding will result in a single railroad system dominating transportation in the Northern Tier of states. Competition will undisputedly be eliminated as to a substantial majority of the traffic carried by the two leading rail competitors in this vast transcontinental area which is vitally dependent upon rail transportation. No special need for or advantage from the merger has been shown apart from the conventional benefits of any such combination of competitors—savings to the parties and some operational efficiencies.

The Commission, in its ultimate authorization of the merger, and the district court, in its affirmance, placed primary reliance upon this Court's approval of the

Penn-Central [10] and Seaboard-Atlantic Coast Line [11] mergers. But the Northern Lines merger arises in a wholly different context and would have wholly different effects. There are here no allegedly faltering giants (as in *Penn-Central*) whose union would not only buttress one another but would save a vitally needed carrier (the New Haven). The merger applicants are each among the most prosperous railroads in the country. The Northern Lines' only rail competition comes from the relatively weak Milwaukee, as contrasted with the powerful Southern in the Seaboard-Coast Line case, where the Commission could say that the reduction of rail competition was "not substantial" (320 I.C.C. 122, 167). And intermodal competition is of less significance here than in almost any other section of the country—certainly far less than in the relatively crowded corridors where Penn-Central and Seaboard-Coast Line operate.

The Commission's First Report carefully evaluated the competitive factors and found insufficient countervailing public benefits to satisfy the public interest. The Second Report—*with no new evidence on competition or benefits* (apart from enlarged estimates of monetary savings for the applicants)—left the earlier findings substantially undisturbed and reached the opposite conclusion, with no real basis other than a reassessment of the Commission's statutory duty. Where the First Report found the examiner's reliance

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[10] *Penn-Central Merger Cases*, 389 U.S. 486.

[11] *Florida East Coast R. Co.* v. *United States*, 259 F. Supp. 993 (M.D. Fla.), affirmed *per curiam* 386 U.S. 544; *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154 (*per curiam*).

upon "a policy of favoring railroad mergers" to be "a perversion of legislative history and intent" (App. p. 158), the Second Report "view[ed] anew the question of competition in light of our finding that [the statute] * * * was certainly not negative or restrictive toward mergers * * *" (App. pp. 312–313). Where the First Report held that the Commission could approve a merger involving such "a substantial lessening of competition throughout a large territory" only "on the basis of countervailing public interest considerations" (App. p. 159), the Second Report, as affirmed by the district court, merely concluded that the competitive situation which resulted from the merger is "consistent with the public interest" (App. pp. 37–38).

We submit that the Second Report's reversal of the Commission's original conclusion of inconsistency with the public interest was thus premised upon an erroneous concept of the Commission's duty when confronted with a seriously anticompetitive merger proposal. Under the standards Congress has adopted the conventional benefits of merger present here are, as a matter of law, not enough to establish that the merger is in the public interest when substantial intramodal competition is eliminated, the remaining intermodal and intramodal competition is weak, and the area is heavily dependent on rail service. Greater needs and advantages to the public interest are required, but this record does not show them.

1. Section 5(2)(b) of the Interstate Commerce Act, 49 U.S.C. 5(2)(b), provides that the Interstate Commerce Commission may approve a proposed rail

merger if it concludes that the transaction, "subject to such terms and conditions and such modifications as it shall find to be just and reasonable, * * * will be consistent with the public interest." If the Commission approves a merger, the participating railroads "are relieved from the operation of the antitrust laws." 49 U.S.C. 5(11).

The national transportation policy [49 U.S.C. preceding § 1] requires the Commission to "promote * * * economical * * * service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, [or] undue preferences or advantages * * *." And as this Court has said "The preservation of independent and competing * * * carriers unquestionably has bearing on the achievement of those ends. Hence, the fact that the carriers participating in a properly authorized consolidation may obtain immunity from prosecution under the anti-trust laws in no sense relieves the Commission of its duty, as an administrative matter, to consider the competitive situation in the industry in the light of the effect of the merger on competitors and on the general objectives of the national transportation policy." *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 86–87; *Denver & R.G.W.R. Co.* v. *United States,* 387 U.S. 485.

Thus, this Court has recently held that because merger of competing railroads is a departure from our traditional national policy, which makes competition the primary regulator of the economy, " * * *

before a rail merger is approved, there must be convincing evidence that it will serve the national interest and that terms are prescribed so that the congressional objective of a rail system serving the public more effectively and efficiently will be carried out. Obviously, not every merger or consolidation that may be agreed upon by private interests can pass the statutory tests." *Penn-Central Merger Cases,* 389 U.S. 486, 500. And in interpreting the Federal Maritime Commission's similar obligation to evaluate anticompetitive effects in carrier agreements under Section 15 of the Shipping Act (46 U.S.C. 814), this Court held last Term that serious anticompetitive effects "alone will normally constitute substantial evidence that the agreement is 'contrary to the public interest' unless other evidence in the record fairly detracts from the weight of this factor." *Federal Maritime Commission* v. *Svenska Amerika Linien,* 390 U.S. 238, 246. The Court went on to hold (*id.* at 243, 245, n. 4) that the FMC's standard requiring the proponent of such an anticompetitive agreement to "demonstrate that * * * [it] was required by a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose" is "in full accord with the kind of accommodations between antitrust and regulatory objectives approved by this Court in [*Seaboard Air Line R. Co.* v. *United States,* 382 U.S. 154, and *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173] * * *."

Thus, this Court has recognized that under the National Transportation policy intramodal competition has an important function in stimulating optimum

transportation performance, and that regulation alone is no substitute for the initiatives generated by competition.

To be sure, the Commission has substantial discretion in evaluating anticompetitive losses and balancing them against other public interest gains. But the cases referred to must be read as placing some outer limits on that discretion. Where the loss of competition would be substantial (and here it would be much more than that) a meaningful regard for values of competition incorporated in the concept of the public interest forbids the Commission to allow a combination unless it is required by a *serious* transportation need, or would secure *important* public benefits. It is not enough to point—as the Second Report does—to a statutory scheme that is in general terms receptive to railroad mergers. While some combinations of railroads may be desirable, the Commission—as the Court pointed out in *Penn-Central, supra*—is not to approve every proposed merger. Rather, it is directed to choose among mergers and to approve only those as to which there is "convincing evidence that [they] will serve the national interest."

2. In order to appreciate the seriousness of the anticompetitive effects that would flow from this merger, it is enough to look to the findings of the First Report, which have not been seriously undermined by the Second Report's more superficial reworking of the same record. And even that effort to minimize the anticompetitive impact did not lead to a denial that there would be serious losses of competition; rather, the Second Report could go no further than to assert that "there is, and after the merger would continue to be

substantial intermodal and intramodal competition" (App. p. 316), including "enhancement" of the Milwaukee.

A. The First Report had considered the competitive impact of the merger both from the standpoint of the total transportation market (App. pp. 134–139) and, because of the inherent advantage of railroads over motor carriers in moving long-haul, low-rated bulk commodities and piggyback, from the standpoint of rail transportation as a distinctive market (App. pp. 140–150). As to intermodal competition it found that the applicants had actually increased their carload revenues in "the manufactured and miscellaneous" categories (which are most vulnerable to intermodal competition) between 1960 and 1963; that they did not face intermodal competition as strong as that which exists in other parts of the country; and that their characteristically long hauls and high proportion of bulk cargo greatly reduced effective motor-carrier competition.

In the rail transportation market, the First Report focused on the Northern Tier as the relevant geographic area and used various indicia to measure the competition between the railroads, including the percentage of their gross revenues (43%) and total tonnage (37%) at points where they are directly competitive;[12] the percentage of their revenues attributable to direct competition for overhead traffic (12%); and,

[12] This is a conservative measure of competition for traffic originating or terminating on the merging lines, since a station at one point on one line may also compete with a station at another point on another line. This is so where traffic can be transported to or from either point without excessive total costs.

more important, the relevant market shares for long-haul freight traffic between the Northwest and the Twin Cities moving through representative gateways, from which it projected an estimate of the amount of such carload traffic moving east (83%) and west (61%) which the new company would handle after merger. In addition, it explored the total ton miles the new company would handle in the main Northern Tier States (67%). On this basis it concluded that, even with a strengthened Milwaukee, the merged company's dominance in the Northern Tier would be so great as to make the merger contrary to the public interest.

The Second Report attempted no similar analysis nor did it make any new findings (App. pp. 312–323). Instead, the Commission emphasized the obverse of the first report—*i.e.*, that at points accounting for 57% of their revenue the applicants do not directly compete. In addition it asserted in general terms that at the principal points in the Northern Tier served by one or more of the applicants the apportionment of traffic was not wholly the result of the interplay of competitive forces; that stations served by one of the applicants and one other rail carrier are generally also served by other modes; and that by reason of the merger conditions the Milwaukee would be substantially strengthened as a competitor.

The district court recognized that the Second Report did not reassess the market shares of the merging lines in the relevant Northern Tier. Rather, the court found that the new generalizations set forth by the Commission "are broadly indicative of the weakness of the Department of Justice's emphasis on raw sta-

tistics" (App. p. 24). But these "raw statistics" were drawn from the Commission's unrejected findings in the First Report. If they are not meaningful measures of the merger's competitive effects, the Commission should have made findings showing more accurate measures of the relevant geographic market. It did not do so. Indeed, the specific figures cited in the Second Report are primarily designed to show not the crucial amount of *traffic* (including overhead traffic) as to which competition would be lost, but simply the number of *points* on the combined lines where competition would not be reduced. And the percentage figures used are severely and unjustifiably distorted by the expansion of the area considered from the Northern Tier to the entire post-merger system, including the separate area of the Burlington reaching south to the Gulf states, throughout which competition would be unchanged.

B. Although the Second Report speaks loosely of an "enhancement" of competition expected to flow from the Milwaukee conditions, the district court interprets this as a contention only that the Milwaukee would be made stronger in relation to the Northern Lines. Even this more guarded conclusion is at odds with the First Report's detailed consideration of the effect of the identical conditions. The Second Report contains no new findings in support of its new conclusion. And the record shows that the Milwaukee's net traffic gain would be only $11.8 million,[13] an increase

[13] The net diversion to Milwaukee computed from the chart at App. p. 129, was $14,817,897. In the Second Report this was reduced by 20% (App. p. 261), leaving a net estimated diversion of $11,854,318.

of only 4.9% of its 1965 net railway operating income (App. p. 105). This is to be compared with the applicants' combined revenues of $734.2 million (*ibid.*), the $39 million the Commission has found that the Northern Lines will save (App. p. 259), their combined net income of $81.6 million (App. p. 105), and the other benefits which the Northern Lines will enjoy as a result of the merger. This hardly suggests a significant increase in the Milwaukee's competitive position relative to the merged companies; rather it reinforces the First Report's conclusion that the merger, even with conditions, will leave the Milwaukee "relatively weaker than it is today" (App. p. 147).

The conclusion is thus inescapable that the Milwaukee conditions, far from constituting a significant affirmative benefit that could justify the merger, are at best a relatively limited offset against the anticompetitive impact of the merger.

3. Regulation by the Commission, of course, restrains in considerable degree discriminatory practices and gross rate abuses by rail and other carriers. But it cannot substitute for initiative of the managements of the carriers, upon which the Nation's transportation system depends for the origination of rate and service proposals to be submitted to the Commission for its approval. Competition can spur that initiative. New types of service such as special care and rail-truck piggyback service, improved operating techniques, better scheduling, research and innovation, all are matters controlled by railroad managements. Competition, far more than regulatory pressures, pushes those managements toward efficiency and better performance. Moreover, it is competition that best

serves to assure a transmission of the benefits of efficiencies to the public generally. Even in the regulation of rates, maintenance of a railroad's rate base at its most efficient levels is not ordinarily achieved through regulation alone but through competitive pressures.

Before approving a merger of healthy carriers who represent the major source of rail competition in a vast area, the Commission should be required to show why the increased "proficiency" and profitability that these already effective and prosperous railroads may achieve by consolidation are likely to benefit shippers more than the cost reductions and rate reductions from new techniques that competitive pressures have historically produced. If it cannot do so, and cannot point to some strong countervailing public need or benefit, then approval of the merger violates the discretion entrusted to the Commission under the National Transportation Policy. Such was the situation in this case.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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JANUARY 1969.

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1132–68
Filed December 11, 1968.

UNITED STATES OF AMERICA, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL., DEFENDANTS

Before: FAHY, Senior Circuit Judge*, in Chambers.

ORDER

It is ORDERED, sua sponte, that the opinion of this Court filed herein on November 20, 1968, is amended as follows:

> 1. In the first complete sentence on page 10, the word "westerly" should be substituted for the word "easterly". That sentence should read, "Burlington's 8648 miles of road are located in eleven states extending from Chicago northwesterly to the Twin Cities, and westerly and southwesterly to Missouri, Kansas, Colorado and Montana, with subsidiaries reaching the Gulf of Mexico at Houston and Galveston.[10]"

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*Serving with Chief Circuit Judge Bazelon and Chief District Judge Curran as members of the District Court of three judges designated by the Chief Circuit Judge by order herein of May 10, 1968.

2. The third word of the third line of the quote from the Second Report on page 14 should be spelled "unification".

3. The fourth word of the fifth line of the quote on page 31 should be "many" instead of "may".

4. In the fourth line from the bottom of page 34, reference is made to ". . . construction of new superhighway. . . ." The word "superhighways" should be substituted for the word "superhighway".

[The pages in App. A affected are App. pp. 10, 14, 32 and 34, respectively.]

U.S. GOVERNMENT PRINTING OFFICE: 1969

In the Supreme Court of the United States

OCTOBER TERM, 1968

No.

NORTHERN LINES MERGER CASE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPENDIX TO JURISDICTIONAL STATEMENT FOR THE UNITED STATES

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1132-68

UNITED STATES OF AMERICA, PLAINTIFF,

CHARLES E. BRUNDAGE, BRADFORD F. STORY, SAMUEL C. WILLIAMS, JR., WARREN CLARK, constituting THE NORTHERN PACIFIC STOCKHOLDERS' PROTECTIVE COMMITTEE, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, STATE OF WASHINGTON, CITY OF AUBURN, PUBLIC SERVICE COMMISSION OF THE STATE OF MINNESOTA, LIVINGSTON ANTI-MERGER COMMITTEE, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, DEFENDANTS,

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, PACIFIC COAST RAILROAD COMPANY, GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC., CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, 230 PACIFIC NORTHWEST SHIPPERS, PUBLIC UTILITY COMMISSIONERS OF OREGON, INTERVENOR-DEFENDANTS

Donald F. Turner, Special Assistant to the Attorney General, argued the cause for plaintiffs. With Mr. Turner on the briefs were Assistant Attorney General Edwin M. Zimmerman, David G. Bress, United States Attorney, Robert A. Hammond, III, Howard E. Shapiro, Arthur I. Cantor and B. Barry Grossman.

Robert W. Ginnane, General Counsel, Interstate Commerce Commission, argued the cause for defendants. With Mr. Ginnane on the briefs were Fritz R. Kahn, Jerome Nelson, Betty Jo Christian, Nahum Litt, and Raymond M. Zimmet.

Louis B. Daily argued the cause for Charles E. Brundage, Bradford F. Story, Samuel C. Williams, Jr., Warren Clark, constituting The Northern Pacific Stockholders' Protective Committee, intervenor-plaintiff. With Mr. Daily on the briefs was Harry Tyson Carter.

John C. Sheehy argued the cause for Board of Railroad Commissioners of the State of Montana, intervenor-plaintiff, with Mr. Sheehy on the briefs were William T. O'Leary and Marvin J. Sonosky.

Patrick McEligot, Assistant Attorney General for State of Washington, argued the cause for State of Washington, intervenor-plaintiff. With Mr. McEligot on the briefs were John J. O'Connell, Attorney General, and Frank P. Hayes, Assistant Attorney General, for State of Washington.

Joel E. Hoffman argued the cause for City of Auburn, intervenor-plaintiff. With Mr. Hoffman on the briefs were Robert L. Wald and Alva C. Long.

Valentine B. Deale argued the cause for Livingston Anti-Merger Committee, intervenor-plaintiff.

Robert E. Sher filed a complaint of intervention for Public Service Commission of the State of Minnesota, intervenor-plaintiff. With Mr. Sher on complaint was Richard Musenbrock, Special Counsel to the Public Service Commission of State of Minnesota.

D. Robert Thomas argued the cause for Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Spokane, Portland & Seattle Railway Company, Pacific Coast Railroad Company, and Great Northern Pacific & Burlington Lines, Inc., intervenor-defendants. With Mr. Thomas on the briefs were Ray Garrett, Lee B. McTurnan, Anthony Kane, Louis E. Torinus, Earl F. Requa, Frank S. Farrell, Eldon Martin, R. T. Cubbage and Richard J. Flynn.

Raymond K. Merrill argued the cause for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, intervenor-defendant. With Mr. Merrill on the briefs were Edwin O. Schiewe, Thomas H. Ploss and Patrick H. Corcoran.

Fred H. Tolan argued the cause for 230 Pacific Northwest Shippers, intervenor-defendant. With Mr. Tolan on the briefs was Alan F. Wohlstetter.

Henri F. Rush, Jr., Special Assistant to the Attorney General for State of Oregon, argued the cause for Public Utility Commissioner of Oregon, intervenor-defendant. On the briefs were Robert Y. Thornton, Attorney General of Oregon, Richard W. Sabin, Dale T. Crabtree and William I. Harkaway.

Before: BAZELON,* Chief Circuit Judge, FAHY,* Senior Circuit Judge, and CURRAN, Chief District Judge.

OPINION

FAHY, *Senior Circuit Judge:* This suit arose on complaint of the United States, acting through the Department of Justice, to enjoin and set aside orders of the Interstate Commerce Commission of November 30, 1967, April 11, 1968, and June 17, 1968.[1] The first of these orders approved, with conditions, applications of the railroad companies hereinafter named to merge and to complete related transactions. The approval followed reconsideration of the "Report of the Commission" (First Report) of March 31, 1966, which had denied the merger applications as not consistent with the public interest.[2] The April 11, 1968 order denied petitions for reconsideration of the order of November 30, 1967, except in relatively minor respects which modified the Commission's retention of jurisdiction and certain of the Commission's protective conditions. The order of April 11, 1968 is not now independently contested.

The Interstate Commerce Commission answered the complaint, opposing the relief sought by the De-

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* Serving with Chief Judge Curran as members of the District Court of three judges designated by the Chief Circuit Judge by order herein of May 10, 1968.

[1] See note 4, *infra.*

[2] The First Report was concurred in by a majority of six members of the Commission with five members dissenting. The orders now in suit represent the views of eight members, with two dissenting and one not participating.

partment of Justice. Other parties, as set forth in the margin,[3] have intervened, some as plaintiffs, some as defendants, the latter including the applicant railroad companies.

After preliminary proceedings resulting in a stay of the orders pending either decision on the merits or further order of the court the case was submitted to this three-judge District Court designated in accordance with 28 U.S.C. §§ 2325, 2284 for decision on the record before the Commission, the pleadings, briefs, memoranda and oral arguments.

We sustain the Commission's approval of the merger and related transactions. The history and nature of the case lead to an opinion which explains our reasons at some length. We review the elaborate decision of the Commission. We conclude that in giving its approval the Commission was guided by the applicable legal principles and made findings, supported by substantial evidence, requisite to the validity of its action. We recognize that some of those findings are necessarily conclusional. These we hold to be reasonable. A number of conditions are attached by the

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[3] *Intervening plaintiffs:* Northern Pacific Stockholders' Protective Committee; City of Auburn, Washington; State of Washington; Board of Railroad Commissioners of Montana; Livingston Anti-merger Committee. *Intervening defendants*: Great Northern Railway Company; Northern Pacific Railway Company; and their affiliates Chicago, Burlington & Quincy Railroad Company; Pacific Coast R.R. Co.; Spokane, Portland and Seattle Railroad Company; and Great Northern Pacific & Burlington Lines, Inc.; other intervening defendants: Chicago, Milwaukee, St. Paul & Pacific Railroad Company; 230 Pacific Northwest Shippers.

Commission to its approval. These in our view are just and reasonable, as well as reassuring.

Our opinion also considers the objections raised by the Department of Justice, the State of Washington, the City of Auburn, the Board of Railroad Commissioners of the State of Montana, and the Livingston Anti-merger Committee. We devote special attention to whether the competitive situation to result from the unification, conditioned as it will be, is inconsistent with the public interest, or, as we believe, is consistent therewith in light of the national transportation policy formulated by Congress. We conclude, also, that the ratio of stock exchange approved by the Commission is just and reasonable, that the employee problem is satisfactorily solved and, as will appear, that other contentions against the merger do not override the benefits, including savings and better service, which are projected in the reasoned judgment of the agency charged with primary governmental responsibility. We note with approval the retention by the Commission of jurisdiction to enable it to make such readjustments as may appear to be desirable, including those which may arise from pending proceedings affecting other railroads in the vast territory involved.

The orders in question [4] eventuated from applica-

[4] After this case was filed but before submission of the case for decision by this court the Commission under date of June 17, 1968, on resconsideration of its report and order of April 11, 1968 made what is designated as a "Third Report of The Commission on Reconsideration" embodying the Commission's construction of certain conditions contained in Appendix L of the report and order of November 30, 1967, as modified, particularly with respect to Condition 23. None

tions filed February 17, 1961,[5] under 49 U.S.C. § 5[6]

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of the parties has raised any question about this Third Report and we assume it is not independently contested.

[5] "Finance Docket No. 21478,[1] Great Northern Pacific & Burlington Lines, Inc.—Merger, etc.—Great Northern Railway Company, et al."

[1] This report also embraces Finance Docket No. 21479, Chicago, Burlington & Quincy Railroad Company, et al. —Stock Issuance, et cetera, and Finance Docket No. 21480, Great Northern Pacific & Burlington Lines, Inc., et al.—Construction and Abandonment.

328 I.C.C. 460; 331 I.C.C. 228; 331 I.C.C. 869; 333 I.C.C. 391.

[6] This Section sets forth in its subdivision 2(a) the lawfulness of mergers approved in subdivision (b). The latter among other things sets forth the standards to be followed by the Commission in determining whether to approve:

> . . . If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable; . . .

Subdivision 2(c) provides:

> (c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

Section 5 further provides in subdivision 11:

> The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation par-

by Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), these companies being sometimes referred to as Northern Lines, the Pacific Coast R.R. Co. (Pacific Coast or PC), the Chicago, Burlington & Quincy Railroad Company (Burlington), and the Spokane, Portland and Seattle Railway Company (SP&S), these latter two companies being subsidiaries of the Northern Lines, all common carriers by railroad subject to Part 1 of the Interstate Commerce Act, and Great Northern Pacific & Burlington Lines, Inc., (New Company or NuCo), which is not a carrier. The carriers applied to merge into New Company,

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ticipating in or resulting from any transaction approved by the Commission thereunder shall have full power . . . to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

and for lease by the latter of SP&S, with control of subsidiaries and the completion of other transactions better to effectuate the merger and lease.[7]

Extensive proceedings ensued before the Commission, including public hearings and an examiner's report served August, 1964, which recommended approval of the applications, but with which the Commission did not agree. On applicants' petition of July 27, 1966,[8] the Commission reopened the proceedings on January 4, 1967, for reconsideration and oral argument on all issues and for limited further hearing to determine, on the basis of current information readily available, the amount of estimated savings resulting from the proposed merger in light of (1) agreements entered into between the applicants, on the one hand, and, on the other, the Milwaukee and

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[7] Among those transactions were the issuance of certain securities and the assumption of obligation and liability in respect of securities under Section 20a of the Act and the obtaining of certain extensions and abandonments of railroad lines under Sections 1(18) to 1(20), inclusive, of the Act.

[8] A petition was simultaneously filed by Northern Pacific Stockholders' Protective Committee (NPSC), intervener before the Commission, seeking further hearings with respect to the justice and reasonableness of terms and conditions of applicants' merger agreements. A petition was also filed by The Denver and Rio Grande Western Railroad Company (Rio Grande or DR&W), one of the railroads receiving protective conditions, seeking an investigation into the agreements entered into by applicants with Milwaukee and the Chicago and North Western Railway Company (North Western or NW). Applicants replied to these petitions, and the Commission received from numerous parties replies to applicants' petitions.

North Western and (2) the effect of relevant financial, operational and other changes related to savings, which had occurred subsequent to close of the hearings. Those matters were referred to an examiner for hearing.

The reconsideration resulted in the decision of November 30, 1967, accompanied by the exhaustive "Report of the Commission on Reconsideration and Further Hearing" (Second Report), with appropriate order approving the applications and related transactions.

New Company in consequence would achieve unified control and operation of a network of railroads of almost 27,000 miles of tracks extending from the Great Lakes and Mississippi River through the Northern Tier States to the Pacific Northwest and California, and reaching through affiliates [9] to the Gulf of Mexico. Great Northern operates some 8200 miles of road located in ten states and two Canadian provinces. Northern Pacific operates some 6800 miles of road with lines in seven states and one Canadian province. These roads extend from the Twin Cities across the Northern Tier States to Spokane, Tacoma and Portland, with branch lines serving the lumber and agricultural producing territories along the route. Burlington's 8648 miles of road are located in eleven states extending from Chicago northwesterly to the Twin Cities, and easterly and southwesterly to Missouri, Kansas, Colorado and Montana, with subsidi-

[9] The Colorado and Southern Railway Company (C&S) and Fort Worth and Denver Railway Company (FW&D), both controlled by Burlington.

aries reaching the Gulf of Mexico at Houston and Galveston.[10] Since the Burlington routes are largely complementary to those of Northern Lines there is no substantial competition between Burlington and its parents. The SP&G in Washington and Oregon has the most direct route from Spokane to Portland and is of strategic importance to Northern Lines since Spokane is on the main transcontinental routes and Portland is an important terminal for both. Northern Pacific has extensive land holdings, from which it derives important income; and New Company would obtain title in fee to more than two million acres and to mineral rights in an additional six million acres.

The main lines of Great Northern and Northern Pacific are both parallel and complementary. The greater part of the latter's mileage is in the western part of the system while the greater part of the former's is in its eastern portion. West of Minnesota, Great Northern serves primarily those communities lying to the north while Northern Pacific serves the southern parts of these states. Only Great Northern reaches California. The area transversed by Northern Lines is lightly populated except at its eastern and western extremities. But the area is extensive, some 1700 miles in length and 900 miles in breadth. It is rich in animal, mineral and forest resources, with, however, a limited market for its products. For this reason producers are heavily dependent upon transportation. Rail transportation to populous centers at cost low enough to permit participation in those markets is important.

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[10] See note 9, *supra.*

As the Commission also points out there is an imbalance of traffic. Historically the West has been a market for the finished products of the Midwest and the East and a supplier to those areas of basic raw materials. Its lower-rated traffic in its long haul east is not as vulnerable to incursions by intermodal competitors of Northern Lines as is the higher-rated manufactured traffic moving into the area served by Northern Lines. The latter, both from the east and from the West Coast is vulnerable to motor carrier competitors and others. It is this traffic which the rail carriers must retain to balance their operations.

A combination of factors, the Commission narrates, had long convinced the management of Northern Lines that, together with Burlington, SP&S and Pacific Coast, they should be unified under New Company's control. They serve the same eastern terminals and western ports as competitors and the traffic they carry is similar. It is different only in areas where their lines are widely separated, with no substantial competition, however, between either of the Northern Lines and Burlington, whose traffic differs and whose service area is not only more heavily populated than that of Northern Lines but also furnishes an important market for producers in the area served by Northern Lines.

Management of Northern Lines considered that these railroads, with Burlington, SP&S and Pacific Coast, which they control, if unified under New Company with an enlarged and more efficiently coordinated pool of rolling equipment, elimination of duplicative functions, facilities and personnel through at-

trition, and with routing, transit and other services more finely tuned to the needs of the shipping public, would be a more proficient railroad than the applicants separately. Greater ability to adjust to seasonal and economic fluctuations in traffic, thus maintaining a better overall balance, would result. The whole would be better than the sum of its component parts and better able to cope with the increased intermodal competition of motor and water carriers which has intensified with improved highways and waterways.

In early 1956 Northern Lines through a joint management committee began preparations for merger proceedings. The independent transportation engineering firm of Wyer, Dick & Company, referred to as Wyer, was employed to analyze and report on the operating advantages and financial savings which could be realized. This was followed by agreements under which New Company was formed and the terms and conditions of the proposed unification were formalized.

The Second Report of the Commission embodying the basic decision of November 30, 1967, now challenged, in addition to the above background material, includes a reexamination of the First Report, outlines the hearing on reconsideration, explains the positions of various parties, and devotes special attention to the objections of the Department of Justice. The agreements executed by applicants with the Milwaukee and the North Western railroads are explained. These evidence applicants' acceptance of conditions favorable to Milwaukee and North Western,

deemed essential to the public interest finding of the Commission accompanying its approval of the applications. As a consequence of these conditions those roads withdrew opposition to the merger. Agreements of applicants with representatives of the employees are considered. While the Commission notes the opposition of the Railway Labor Executive Association (RLEA), we point out that subsequent agreements affecting employees have led to withdrawal of employee opposition to the merger. The Commission required, as a condition to approval, that attrition conditions such as were contained in agreements which had been reached would be applied to all affected [11] employees, thus eliminating one of the reasons for the First Report's denial of the applications. The Second Report states:

> [A]s this report will show, we are convinced on deliberate and searching reconsideration that the proposed unification, [sic] subject to appropriate conditions which we shall specify to protect competing railroads, employees and the general pub-

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[11] RLEA sought protective conditions to cover all employees, of all carriers, adversely affected by the merger. The Commission responded:

> As found in the *Seaboard-Coast Line* case, employees affected are those of the carriers involved in the merger and most immediately affected thereby. Our discussion and conclusions herein should be viewed in that context.

331 I.C.C. 276. The Commission's position in *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line*, 320 I.C.C. 122, was affirmed. *Florida East Coast Ry. Co.* v. *United States*, 259 F. Supp. 993, 1019 (M.D. Fla.), *aff'd per curiam*, 386 U.S. 544.

> lic, will be consistent with the public interest and should be approved. 331 I.C.C. 244-45.

The Commission followed with a discussion of the relevant statutory criteria, analyzed the relevant financial data, included a finding that merger would entail no increase in the aggregate fixed charges, set forth the major proposals for unification of operations and of properties, and explained the stock exchange ratio between the holders of Northern Pacific and Great Northern stock. The benefits of merger to applicants, to shippers and to the general public, were enumerated.

The Commission analyzed at length the competitive situation, which we shall consider more fully, and discussed and made findings with respect to the protection of other railroads. It emphasized the change in the situation since the prior report, reaffirmed its finding that the survival of no railroad operating in the territory was imperiled, and further found,

> As modified by the conditions which we impose hereinafter, most of which were the subject of agreements between applicants and the railroad interveners, the proposed unification presents an entirely new perspective for intramodal competition in the efficient and economical movement of transcontinental, western and Pacific Coast traffic. That perspective portends for a stronger capability in those railroads individually and collectively to prosper and to effect numerous economies and efficiencies from which the public will benefit. 331 I.C.C. 281.

The situation with respect to Western Pacific and the objections of Union Pacific, not here pursued, to

Milwaukee's entry to Portland, were discussed. Reference was also made to applicants' stipulations with the Milwaukee, the North Western and other roads. The Commission concluded this branch of its Report by stating that the over-all effect of the conditions imposed, which it found to be just and reasonable, would make for a stronger degree of intramodal rail competition in the affected territory, promote the effective development of improved transportation services to the shipping and receiving public, and comport generally with the purposes and objectives of the national transportation policy as declared in the Act, and "are within the scope of section 5(2)(a) and will be consistent with the public interest." The conditions are set forth in Appendix L to the Second Report, as modified by the reports of April 11, 1968, and June 17, 1968.

Under the heading "Other Issues" the economic effect of the unification on various communities, including the loss of job opportunities or tax revenues due to elimination or rerouting of traffic, is considered. The Second Report concludes that the record does not show that the transportation requirements or well-being of the areas or communities would best be served by denial of the applications, but, to the contrary, that the mergers suitably conditioned augur an era of increased railroad strength, in both intramodal and intermodal competitive aspects in the long run.

The stress placed in the earlier stages of the proceedings on the potential effect of merger on motor carrier rights and operations was considered. The

objection raised by Rio Grande to the inclusion of Burlington in the proposed merger was also considered. The Commission concluded that the inclusion of Burlington was necessary not only if the merger is to achieve the results desired but also in order that the many shippers and receivers served by Burlington would participate in the public benefits flowing from the merger. As to the further point raised by Rio Grande concerning the over-all effects and cross-effects of the merger and of the proposals pending in Finance Docket No. 22688, et al.,[12] involving North Western and other roads, and the proposals in Finance Docket No. 24182, et al.,[13] involving the Milwaukee and the North Western and other roads, the Commission points out that it is faced with various procedural alternatives. In view of the over-all situation the Commission decided to reserve jurisdiction for a period of five years following consummation of the transactions authorized so as to be able to impose such just and reasonable conditions upon petition of any party in interest or upon its own motion, after hearing, that may be necessitated by any cumulative or cross-over problems stemming from approval of this merger and any other transaction authorized under Section 5 with respect to the territory involved, citing *B. & O. R. Co.* v. *United States*, 386 U.S. 372, 387. See Condition 33, Appendix L, as modified by the subsequent report of April 11, 1968.

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[12] Called the *Rock Island* case.

[13] Called the *Milwaukee* case.

The Commission also retained jurisdiction for a like period for the purpose among others of considering petitions under Section 5(2)(d) of the Act by any railroad in the territory involved requesting inclusion in the merger. The Commission held that consummation of the transactions authorized would constitute irrevocable assent by applicants to the Commission's reservation of power to impose, after hearing, such just and reasonable conditions as may be necessary and appropriate.

In its "Summary" the Commission pointed out that the result of the prior First Report was a product of a weighing of three factors: a lessening of competition as between Great Northern and Northern Pacific; an adverse effect upon employees; and the benefits to be derived by applicants and the shipping public; but that on reconsideration of these factors based upon the entire augmented record:

> [W]e now reach a different conclusion. The concern expressed in the prior report as to employee hardship has been relieved by the attrition conditions imposed and agreed to. The speculation that imposition of conditions for the benefit of Milwaukee and NW might actually preclude consummation has been set to rest by the agreements accepting those conditions. The preservation of competition between the Northern Lines in the four northern tier States, which was a dominant factor in the prior decision, we now view in a different perspective and do not see it as an invincible impediment to this merger. Like the many shippers who support the applicants and

> who do business in the said States, and like the numerous States, State and Federal agencies, communities and shipper groups which have dropped their opposition and now favor the merger, we see this transaction as a means for achieving, through appropriate conditions, overriding benefits to the public through improved transportation. Broadening the focus of our appraisal to the area relevant to transcontinental traffic and other interterritory considerations, and reweighing the facts pertaining to the ever-increasing intermodal competition, have made it apparent that this merger can lead to the creation of meaningful rail competition through strengthening the Milwaukee and the NW, as well as making the combined applicants a more proficient transport agency. Viewing the considerations anew, we conclude that the proposals, with requisite conditions, are entirely consistent with the public interest. 331 I.C.C. 289.

The Commission thereupon added its ultimate findings that, if approved with the conditions it requires, the transactions meet the requirements of Sections 5(2) and 20a and b of the Act, conform generally with the purposes and objectives of the national transportation policy, are consistent with the public interest, will enable New Company to use service by motor carrier to public advantage in its rail operations, and will not unduly restrain competition. Moreover, the Commission found that the financial arrangements it outlined are compatible with the public interest, are necessary, appropriate and consistent with performance of service to the public as common carriers, will

not impair the ability to perform that service, and should be authorized.

Finally, the Commission found that the present and future public convenience and necessity require construction and operation by New Company of the connecting lines enumerated in the Second Report, (Appendix J), and permit abandonment by applicants of designated railroad lines, (Appendix K).

It is seen from the foregoing that the findings essential to approval of the applications were made. Some of these are not ordinary factual findings. They are conclusions drawn from the relevant factual situations disclosed by the evidence.

We now test further the action of the Commission by considering it more fully in light of the objections to approval. We bear in mind that, as the reviewing court, "We do not inquire whether the merger satisfies our own conception of the public interest. . . . The judicial task is to determine whether the Commission has proceeded in accordance with law and whether its findings and conclusions accord with the statutory standards and are supported by substantial evidence." *Penn-Central Merger & N. W. Inclusion Cases*, 389 U.S. 486, 498-99.

The Problem of Competition—In General.

The United States, through the Department of Justice, centers its opposition upon the Commission's appraisal of the resulting competitive situation. The Department sees an invasion of the public policy represented by the antitrust laws, not countered by benefits which justify the merger in the public interest.

Since the transactions came within Section 5(a), the over-all guide is the national transportation policy to further the public interest in efficient transportation. 49 U.S.C. § 5(2)(b), note 6, *supra*.

The Department contends that the Commission erred in construing the national policy as one to further consolidation of railroads into a limited number of systems with a presumption in favor of mergers. While the Commission interpreted the national policy as encouraging mergers, we do not think it was guided by a presumption. It concluded that "the policy of the [Transportation Act of 1940] is clearly to facilitate and thereby foster and encourage consolidations which can be shown to be consistent with the public interest." 331 I.C.C. 269. Thus, consolidation must be shown and not presumed to be consistent with the public interest.

The importance of competition as an indispensable factor in the public interest equation is recognized in the Second Report; but it is not the only factor to be weighed under the policy of Congress. *Penn-Central Merger Cases*, *supra* at 500; *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154.

> Competition is merely one consideration here. See *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154 (1965). This departure from the general and familiar standard of industrial regulation emphasizes the need for insistence that, before a rail merger is approved, there must be convincing evidence that it will serve the national interest and that terms are prescribed so that the congressional objective of a rail system serv-

> ing the public more effectively and efficiently will be carried out. Obviously, not every merger or consolidation that may be agreed upon by private interests can pass the statutory tests.

Penn-Central Merger and N & W Inclusion Cases, 389 U.S. at 500. The Commission in its Second Report evidenced an understanding of the governing guidelines.

The tremendous area involved, with its numerous centers of population and diversified sources of traffic, leads to equally tremendous detail related to the effect of the merger on competition. In its First Report of March 31, 1966, disapproving the merger, see, *e.g.*, 328 I.C.C. 511, *et seq.*, and in its Second Report of November 30, 1967, approving the merger, see, *e.g.*, 331 I.C.C. 269, *et seq.*, the Commission analyzed the competitive problem in detail. In the First Report it concluded that after merger the applicants would overshadow their rail competitors and that they had failed to show that merger would result in transportation service to the public superior to that which could be provided without merger, "or that the benefits reasonably attributable to the proposed merger outweigh the adverse effects of the merger on carrier employees and the benefits that shippers derive from the competition to be eliminated." 328 I.C.C. 528.

Following this Report the employee problem disappeared, and, moreover, a different conclusion was reached as to the benefits to shippers. But at this point we are concerned with competition. The Commission classified stations into four classes: I. Sta-

tions commonly served by two of the applicant carriers and no other rail carrier; II. Stations commonly served by two of the applicant carriers and at least one nonapplicant carrier; III. Stations served by one applicant only; IV. Stations served by one applicant and one or more other rail lines. The Commission noted that some of the Class II points, though served by one or more of the applicants, did not have actual competition between any of the applicants because the applicant lines were end-to-end or complementary at these points. As to the principal Class II points in the Northern Tier, Head-of-Lakes, Portland, Seattle, Spokane, and the Twin Cities, the Commission observed that each of these points would be served after the merger by at least three railroads (in the case of the Twin Cities, by nine) and by numerous truck lines, bus lines, and airlines. The Commission concluded:

> In our view the competitive impact upon the Class II stations is not so significant as to warrant denial of the applications. First, apportionment of traffic between (Great Northern), (Northern Pacific) and other roads serving these points is not wholly the result of interplay of competitive forces, but often results from other factors entirely. Second, shippers at these Class II locations, in addition to the Northern Lines and one other rail carrier, are generally served by other modes of transportation vigorously competing for traffic. Third, by virtue of the conditions imposed in this case, the Milwaukee—which is the other railroad serving many of the Class II points—will be substantially strengthened as a meaningful transcontinental competitor. 331 I.C.C. 273.

Accordingly, without reassessing the market shares of the merging lines in the relevant Northern Tier, the Commission concluded that the locations at which competition would be most significantly reduced would still have available substantial rail and nonrail carriers so as to preserve sufficient competition to warrant approval of the merger.

Moreover, in its Second Report the Commission concluded that the number of stations at which competition would be entirely eliminated was small, "and these stations do not produce any great volume of applicants' business." 331 I.C.C. 272. Some of these stations are located on the main line of one applicant and on a branch line of another, "with the result that loss of competition is more theoretical than real." 331 I.C.C. at 272. Concern was evidenced as to Class II stations. However, the finding that the allocation of traffic is not wholly the result of competitive forces is another way of saying that the percentage figures pertinent to Class II stations tend to over-emphasize the importance of intramodal competition at these points. This conclusion finds ample support in the record. The factors considered by the Commission are broadly indicative of the weakness of the Department of Justice's emphasis on raw statistics. For example, between the Twin Cities and points served by only one of the applicants shipments are on the one line that serves the noncompetitive point although nine railroads serve the Twin Cities. Noncompetitive Class III stations account for 37 percent of applicants' revenues, Ex. 16, p. 3. Since the elimination of competition between the applicants is now the issue, it should

be noted that over 90 percent of applicants' stations are Class III or IV. Accordingly, much of the revenue attributed to Class II stations is not subject to competition between the applicants. Percentage figures are misleading in another way. The car and tonnage figures, but not the revenue figures, are duplicative as to shipments originating and terminating on applicants' lines. Tr. 3197-98. Further, where Class II stations are located on the branch line of one applicant and on the main line of another, the time factor may eliminate the branch line as a realistic competitor. Thus, the branch line of one railroad is more complementary than competitive with the main line of the other. Tr. 3187-88. Similarly, in many instances, the physical location of the shipper's facility gives one railroad a decided advantage although the other railroad is only a short distance away. Tr. 3127-28, 3190, 6033, 7390-91, 14685. The practice of some large shippers of distributing their business among the various railroads may well result in the reduction of the merged lines' total share of these shippers' patronage. Ex. 228, p. 16; Ex. 230; Tr. 5751, 5757, 9804.

The Commission did not deem it was required to determine the areas of effective competition through an analysis of the relevant geographic and product markets, as those terms are used in antitrust cases, *cf. Brown Shoe Co.* v. *United States*, 370 U.S. 299. We agree. See *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154. The Interstate Commerce Act and other legislation dealing specifically with transportation was the frame of reference within which

the Commission operated, with accommodation, however, to the antitrust policies without being bound to the relevant-market standards of the antitrust laws. See *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79-80.

Competition—The Milwaukee.

A telling objection to approval of the merger at the time of the First Report was made by Milwaukee, which insisted that unless approval were conditioned in such a manner as to strengthen its competitive position with Northern Lines the merger was not in the public interest. In the interim between the First Report and reconsideration of the applications Northern Lines entered into an agreement with Milwaukee accepting the conditions Milwaukee sought. The Commission's approval is conditioned upon the carrying out of these conditions. Milwaukee accordingly no longer objects to approval; indeed, it now urges it. The conditions referred to are important to the ultimate issue of public interest.[14]

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[14] North Western also was a vigorous objector to the merger at the time of the First Report. However, Northern Lines agreed to certain conditions deemed necessary by the Commission with respect to North Western. Summarized, they are, 331 I.C.C. 280:

1. Establishment of through routes and joint rates via the new gateway of Crawford, Nebr., on all traffic interchanged at such junction between NuCo and North Western.

2. Establishment of through routes and joint rates via the new gateway of Oakes, N. Dak., on all traffic interchanged at such junction between NuCo and North Western.

[Footnote continued on page 27]

One of the main lines of Milwaukee runs from Chicago through the Twin Cities and across the Northern Tier States to the Pacific Coast. Milwaukee's original expectations for greater competition with applicants, as matters developed, did not materialize. A substantial reason was that its lines were blunted by not reaching Portland, Oregon, or Bieber, California. Neither Great Northern nor Northern Pacific would interchange traffic with Milwaukee except in circumstances which gave Northern Lines the longest possible haul over their own roads. This privilege of Northern Lines not to "shorthaul" themselves means that traffic originating on the Milwaukee east of the Twin Cities and destined for Portland or California was required to be turned over to one of the merging lines at the Twin Cities. As a consequence, Milwaukee was precluded from being a true transcontinental competitor and was unable to make full use of its extensive trackage ending only a few miles short of

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[14] [Continued]

3. Improved interchange at Minneapolis, Minn., through operational conditions.

4. Cancellation of North Western rental obligations for tracks and facilities not used after unification and sale or lease of Union Yard trackage to North Western.

5. Improvement in North Western interchange at Head-of-the-Lakes, with Duluth, Winnipeg and Pacific Ry. Co. (DW&P).

We note that North Western is not in present or potential competition with applicants, individually or merged, in the Northern Tier States but that protective conditions benefiting North Western are also important to the ultimate issue of public interest.

Portland. Moreover, Milwaukee was completely precluded from the extensive North-South traffic on the West Coast. Similarly, traffic destined for intermediate points on one of the Northern Lines had to be transferred to that line at the Twin Cities even though there were several junctions among Milwaukee and Northern Lines farther west. After discussing these limitations, the Commission concluded in its First Report:

> The limitations on Milwaukee's routes west of Twin Cities and Sioux City, together with the fact that Milwaukee is short hauled at the Twin Cities gateway on a large volume of traffic, has severely limited Milwaukee's traffic potential, and has impaired its competitive position in relation to applicant railroads. Consequently, Milwaukee's participation in substantial movements of transcontinental traffic over its lines west of Twin Cities is limited to that which moves to or from a point served directly by the lines of Milwaukee and to those movements within Mountain-Pacific territory to points beyond its lines, which originate or terminate at local points on its lines not served by applicant railroads. On the other hand, the ability to participate in traffic to and from Oregon and California has been an important factor in the ability of the Northern Lines to improve their relative participation in traffic over their lines west of the Twin Cities. Numerous shippers have indicated that the rate and service limitations on Milwaukee routes have prevented them from making full use of the latter's service potential, to their detriment as well as the Milwaukee's. 328 I.C.C. 493.

In order to alleviate Milwaukee's disabilities and to make it a stronger competitor, the Commission in its Second Report attached conditions designed to remedy its handicaps. Condition 23 now made a part of approval will open to Milwaukee gateways at eleven points in the Northern Tier, thus allowing it to utilize more of its trackage west of the Twin Cities. This condition, again referring to the language of the Commission in its First Report.

> [W]ould permit Milwaukee to solicit for its longest practical haul over its lines west of Twin Cities or Sioux City traffic which must now be surrendered or received at those points. Correspondingly, New Company would have the same opportunity. The condition would also permit shippers to select alternate routes, according to their needs, over the lines of the Milwaukee and the New Company. In addition, shippers and receivers using Milwaukee would gain the advantage of diversion and reconsignment, stop-off and transit privileges available to shippers and receivers using the New Company. 328 I.C.C. 499.

Condition 24(a) will allow the Milwaukee to extend its present termination point from Longview Junction another 47 miles into Portland and there to connect with the Union Pacific so as, for the first time, to be able to compete with Northern Lines transcontinental routes as well as to provide competing North-South service on the West Coast. Exam. Rep. 276-84; 328 I.C.C. 494; 331 I.C.C. 280-83, 357, 872-73. Condition 24(b) will allow Milwaukee to connect directly with Canadian roads north of Portland. Exam. Rep. 284-87; 328 I.C.C. 494; 331 I.C.C. 280-81, 357. Condition

24(c) will allow Milwaukee to serve Billings, one of the two largest cities in Montana, which is presently served only by the Northern Lines. Milwaukee already serves the other major Montana city. Exam. Rep. 287; 331 I.C.C. 281, 357. Condition 25(a) will eliminate the dual basis of switching charges that discourages the movement of traffic over the Milwaukee and the location of industry along its lines. Exam. Rep. 289-91; 328 I.C.C. 493; 331 I.C.C. 280, 357. Condition 25(b) will require reestablishment of rate relationships disturbed by the merger, 331 I.C.C. 280, 358.

The Commission concluded that "a properly conditioned merger, with NuCo competing against a strengthened Milwaukee, will serve to enhance rail competition,[15] achieve a more desirable competitive pattern, while at the same time conferring substantial benefits upon the shipping public throughout the

[15] We note the Commission's statement that "a properly conditioned merger, with NuCo competing against a strengthened Milwaukee, will serve to enhance competition. . . ." 331 I.C.C. 275. This is to be read in context, with the full discussion of the effect of the merger on competition. It is not properly to be interpreted as a finding of an over-all enhancement of competition but rather as an enhancement of the competitive situation of Milwaukee in relation to Northern Lines. It was, of course, recognized that competition between the latter would be eliminated. In its "Summary," 331 I.C.C. 289, the Commission set forth reasons why "this merger can lead to the creation of meaningful rail competition, through strengthening the Milwaukee and the NW, as well as making the combined applicants a more proficient transport agency." No final conclusion of the Commission rests upon a finding by it that competition after would necessarily be greater than before the merger.

territory involved in this case." 331 I.C.C. 275. And see 331 I.C.C. 289.

It was not necessary, as the Department of Justice suggests, that the Commission analyze in more detail the relative competitive strengths of the Milwaukee and the applicants after the merger. The evidence gives substantial support to the conclusion of enhanced competition by Milwaukee, with traffic diversions to it from the merged lines. The Commission's reliance upon this factor in reaching its conclusion that the merger was in the public interest must be accepted as valid, even though the merged lines will have a larger market share than Milwaukee. Milwaukee, by no means a negligible competitor previously, will become for the first time a much strengthened competitor, realistically vying for long haul traffic at every major point served by Northern Lines. The Commission was not required in all the circumstances upon which it did rely to go further by seeking unattainable precision as to the amount of traffic diversion.

One further word on this subject: The Commission was not unmindful of the pending proceeding involving the merger of the Milwaukee with the North Western. Although this merger was not discussed in connection with the strengthening of the Milwaukee by conditions accompanying approval of the Northern Lines merger, the Commission prefaced its "Summary" on reconsideration:

> We cannot isolate our actions herein from [the larger context of the western rail merger picture], but intend this decision to be a beginning

step in the orderly resolution of what has become a highly involuted situation affecting many railroads throughout the territory. 331 I.C.C. 289.

Competition—The Question of Strengthening the Milwaukee Independently of the Merger.

The Department contends that Milwaukee could have been strengthened without the merger and, therefore, the Commission was not entitled to attribute to the merger any benefits due to those conditions of approval which aid the Milwaukee. It is the position to the Department that under Section 1(4), 49 U.S.C. § 1(4), of the Act the Commission could require the railroads to "establish reasonable through routes" with other carriers. It is said that this, with the duty of the railroads under Section 3(4), 49 U.S.C. § 3(4), to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their . . . lines and connecting lines," and not to "discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper," empowers the Commission to require the opening of gateways, end discrimination in interchanges, and otherwise remedy the practices of the Northern Lines which the Commission found have severely limited Milwaukee's competitive potential in the past. The Department also refers to Section 15 (3), 49 U.S.C. § 15(3), which provides:

> The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint,

> establish through routes, joint classifications, the joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, . . .

It is not disputed, however, that these provisions do not enable the Commission to require Northern Lines to grant trackage rights into Portland and Billings as required in the conditions attached to approval of the merger; so, it seems clear, the full benefits of the merger in strengthening Milwaukee could not be obtained as suggested by the Department. As to the other arrangements which the Department says the Commission could require without merger, the Commission itself disclaims such authority, relying upon its own construction of its powers. For this position it enlists some support from *Chicago, M., St. P. & P. R. Co. (Milwaukee)* v. *United States*, 366 U.S. 745; *Thompson* v. *United States*, 343 U.S. 549; and *United States* v. *Great Northern R. Co.*, 343 U.S. 562. The Department thus rests its position upon a construction of the statute which the Commission considers erroneous and opposes.

Were the Commission to overcome its opposition and seek to require Northern Lines to make the arrangements under statutory authority independently of that used in approving the merger it is probable the matter would become involved in protracted proceedings, including litigation, with the outcome quite uncertain. In this situation we do not deem it essential for the court to make a definitive decision as to the correctness of the Department's position; for it is clear the conditions for improvement of Milwaukee in its competitive position with Northern Lines can be accom-

plished now as the Commission requires. This seems the most certain and expeditious manner of doing so, if not the only manner. Moreover, the question in the end is whether the merger is in the public interest. The strengthening of Milwaukee is quite relevant to that question. In its strengthened position, Milwaukee on its part would assure greater intramodal competition. If it were strengthened independently of the merger, as the Department suggests should have been done, the issue of the public interest, though made simpler, would still exist in the merger proceedings. Assuming that the Commission attributes to the conditions strengthening Milwaukee benefits which arise from approval of the merger, the fact that some of those benefits might possibly otherwise have been obtained hardly detracts from the actual advantage of the present conditions, if, as we believe, they give support to the Commission's finding that the merger is consistent with the public interest.

Competition—Intermodal.

This brings us to a fuller consideration of intermodal competition. As we have seen, the Commission referred to the construction of new superhighway and pipelines and to improvements in waterways. These developments, in view of the Commission, presage a competitive future even more intense than the present. The Commission concluded that applicants are faced not only with growing intermodal competition but are losing to competitors a steadily increasing share of the transportation market. While it states that applicants have enjoyed a moderate success, "increasing

competition and an inability to prevent traffic erosion make it necessary that applicants take measures now to assure continued success in the future." They seek this through the merger, leading to a "more efficient transportation plant capable of meeting competition as well as providing equal and in many respects, improved service to the public." 331 I.C.C. 260.

This is a different conclusion from that reached in the First Report. We bear in mind, however, that the Second Report is now the critical one. In it intermodal competition assumes a dual significance. First, it was found that the savings and increased physical resources of the merged lines would enable New Company to run a more efficient transportation system so as to compete better with other modes. It is not contended that New Company, given its estimated savings, will not be able to offer improved service. Secondly, it was concluded that the elimination of competition between Northern Lines in the Northern Tier was not of overriding importance due to the presence of vigorous intermodal competition. The First Report's finding does not invalidate the conclusion in the Second Report. There is ample evidence in the record that motor carriers are reasonable substitutes for railroads in many instances. Numerous witnesses, principally shippers, described substantial incursions by motor carriers into railroad traffic in paper products, steel, cement, fruit, grain, *et cetera*. See, *e.g.*, Tr. 5754, 11836, 9527, 7224, 8023, respectively. Nor is the long haul the sanctuary of the railroad. The average length of haul of Class I motor carriers operating in the merger territory in 1959 was 402 miles, as com-

pared with 381 miles for Great Northern and 462 miles for Northern Pacific. Tr. 523; *Transport Statistics in the United States*, 1959, Section A-1, Statistics of Rail-Line Operations, (Bureau of Accounts, I.C.C.). Among the 248 Class I motor carriers serving the merger territory, there are two major coast-to-coast trucking concerns operating at virtually every major terminal served by applicants. Ex. 17. New interstate highways between Chicago, Twin Cities, and Seattle will make the Twin Cities-Seattle truck route 241 miles shorter than the Northern Pacific track. The same highway will reduce truck travel time to 36 hours as compared with 43½ hours, the fastest rail freight time. Tr. 516, 1474. Applicants proffered substantial evidence as to the rapid growth of motor carriers in the merger territory in terms of revenue, tonnage, and truck registrations. See Ex. 17, Tr. 521-525.

Shipper testimony revealed a wide range of reasons for the switch to motor carriers—lower costs, better service, more flexible routing, faster delivery. The manner in which trucks have managed to undercut the railroads in one or another facet of almost every submarket illustrates the fungibility of rail and motor transport. The rapid growth of the trucking industry and incursion of motor transportation into railroad traffic of all types provide a substantial basis for the Commission's conclusion that motor carriers are ready substitutes for, and vigorous competitors with, rail transport in the Northern Tier.

The Commission's reliance on intermodal competition to justify the reduction or elimination of inter-

railroad competition has been judicially approved in comparable situations, see, *e.g.*, *Penn-Central Merger Cases*, 389 U.S. at 501; *Florida Coast Railway Co.* v. *United States*, 259 F. Supp. at 1010, 1015-16, and has been supported by most commentators.[16] Recent Commission merger cases have stressed "the intensive competition the railroads face today and in the future from other modes of transportation." *Louisville & Nashville R. Co. Merger*, 295 I.C.C. 457, 475, *aff'd sub nom.*, *City of Nashville* v. *United States*, 155 F. Supp. 98 (M.D. Tenn.), *aff'd per curiam*, 355 U.S. 63.[17]

We conclude the above consideration of the bearing of the problem of competition on the public interest equation of the merger by stating that the significant findings and conclusion of the Commission in this matter, to the effect that the competitive situation which

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[16] Phillips, *Railroad Mergers: Competition, Monopoly and Antitrust*, 19 Wash. & Lee L. Rev. 1, 17 ("so long as the public has a choice of transportation, the elimination of interrailroad rivalry cannot be equated with the elimination of competition"), Fulda, *Competition in the Regulated Industries: Transportation* 52 ("the relevant market is now predominantly the market for transportation services rather than railroad services").

[17] See also *Virginian R. Co. Merger*, 307 I.C.C. 401, 416; *Erie R. Co.—Merger—Delaware, Lackawanna & Western Railroad Co.*, 312 I.C.C. 185, 246-47, complaint dismissed, *Brotherhood of Maint. of Way Employees* v. *United States*, 189 F. Supp. 942 (E.D. Mich.), *aff'd per curiam*, 366 U.S. 169; *Chicago & N. W. R. Co.— Purchase—Minneapolis & St. L. R. Co.*, 312 I.C.C. 285 296-97; *Seaboard Air Line R. Co.—Merger—Atlantic Coast R. Co.*, 320 I.C.C. 122, 149-53; *aff'd sub nom., Florida East Coast Railway Co.* v. *United States*, 259 F. Supp. 993 (M.D. Fla.), *aff'd per curiam*, 386 U.S. 544.

will result from the merger is consistent with the public interest, are supported by substantial evidence considering the record as a whole, are reasonable and are sustained.

Benefits in Savings.

The Commission in its Second Report states: "Substantial dollar savings plus an improved earning potential constitute tangible benefits which will accrue to applicants by merger." 331 I.C.C. 260. The Commission estimated the savings at about $40,000,000 annually, due principally to labor savings through reduction of the number of jobs, including the effect of consolidation of operations at various common points. A major part of the savings was to be attributed to unification of applicants' separate organizations at the levels of administration, operation, maintenance, traffic, and others. The Commission relied primarily upon a study and report by Wyer, completed in 1957, revised in 1960, updated in 1965, and supplemented by Wyer's testimony at the rehearing in 1967.

The Commission related the savings to the resulting improved financial posture of applicants and the ultimate issue of the public interest. This improved financial posture, the Commission found,

> [W]ill enable applicants to become stronger and more stable, and thus be better equipped to meet the growing competition now being felt. Moreover, consolidation of facilities, elimination of wasteful duplication, improved routing, better car fleet utilization, and avoidance of time-consuming interchanges among applicants will result in a more efficient railroad. Such achieve-

ments clearly are consistent with the public interest. 331 I.C.C. 263.

The First Report discounted by one-third savings estimated at approximately $15,000,000 attributable to "common points" because they "could be realized without merger." 328 I.C.C. at 503. In the Second Report these savings were estimated at about $18,000,000, and the Commission concluded that such savings (including the discounted percentage) could not be realized without merger because of the unequal benefits accruing to the respective applicants as a result of consolidations at common points. The findings in the First Report are not binding. The relevant test is substantial evidence to support the present findings. The situations cited in the First Report as instances of successful joint operation without merger were more or less unique. We cannot overrule the Commission's final conclusion that coordination on the contemplated scale is physically impossible absent merger.

The Department of Justice urges that the savings projected by the Commission are excessive because of alleged errors in the Wyer method of updating the savings due to job eliminations. In giving his figures at the 1967 hearing, Mr. Wyer was subjected to extensive cross-examination. His testimony and accompanying tabulations and analyses, while we cannot say they lead to a precise amount to be accepted as correct, on the whole furnish substantial evidence to support the savings as found by the Commission. The findings are not tied to a precise amount:

> As is implied above the exact amount of merger savings cannot be precisely determined under any

> circumstances. Here, we are convinced that they would be substantial and of sufficient amount to justify the merger, both in terms of enabling the merged company to improve its service to the public and of providing a return on investment more nearly commensurate with the investment requirements of a viable and progressive transportation system. 331 I.C.C. 264.

And see, *Erie-Lackawanna R. Co.* v. *United States*, 279 F. Supp. 316, 343 (S.D.N.Y.), *aff'd sub nom. Penn Central Merger Cases*, 389 U.S. 486.

With this basic conclusion of the Commission, and with very substantial savings not left in doubt, attacks upon the Wyer updating methodology, not ignored by the Commission, by no means persuade us that we should either remand for further hearings on this subject, or disapprove the merger.[18] The Com-

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[18] Before the Commission and in court the Department pressed its requests for discovery and/or a broader hearing involving intervening changes bearing upon labor savings. The Commission, in adhering to its limited further hearing, stated:

> We are well aware that the technological and operational improvements on the Nation's railroads have brought about a reduction in the number of railroad employees and a redistribution in the consist of the rail labor force. This has been true in varying degrees throughout the railroad industry. We realize these processes do not stop simply because a transaction has been proposed under section 5 (2) (d) or mark time while we and the courts take evidence and consider the views of all of those who are concerned with the structuring of the Nation's railroad system. Because of the complexities of rail mergers and the demands of due process, administrative consideration of these cases consumes substantial periods of time. But there comes a point at

mission explicitly recognized that the level and consist of employment on the railroads are changing constantly and took this into consideration in reaching its final judgment about labor cost savings, a judgment

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which we must honor our concomitant obligations to complete our proceedings upon a rail merger application within a reasonable time. Most crucial, as the courts have recognized repeatedly, is the point at which we are confronted with petitions for reopening and rehearing in proceedings which already have been pending, sometimes for years—with potential judicial review waiting beyond. See *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514 (1944); and cf. *Florida East Coast R. Co.* v. *United States*, 242 F. Supp. 14, reversed *per curiam subnom. Seaboard Air Line Co.* v. *United States*, 382 U.S. 154 (1965); *Florida East Coast R. Co.* v. *United States*, 259 F. Supp. 993 (1966), affirmed *per curiam*, 386 U.S. 544; the Seaboard-Atlantic Coast Line merger application was filed with the Commission on July 22, 1960, and the administrative and judicial review proceedings were completed on April 19, 1967.

It is in this context that we have considered the Department's contentions. As we have recognized above, the level and consist of employment on the Nation's railroads are changing constantly. We assume that the length of the proceedings on any significant rail merger application means that by their completion it can be shown that the estimated savings at some points or in some operations have been overtaken or outdated by technological change. Similarly, we recognize that our permissive order approving a merger does not require that it be effectuated in terms of every savings-producing change visualized by a management consultant. Rather, we recognize that with the passage of time, when an approved merger finally is consummated, it will realize savings which were not anticipated, while other anticipated savings are not achieved. . . .

331 I.C.C. 263-64.

supported by substantial evidence to which the Commission's reasoning was applied.

> Thus, in the present proceeding, we are convinced that labor cost savings, in the approximate magnitude discussed elsewhere in the report, will occur. Moreover, in our judgment the likelihood that the Department would have been able to show otherwise through the discovery or further hearing procedures which it sought, was not sufficiently great to justify any additional time and expense in this already prolonged proceeding. 331 I.C.C. 264.

The Stock Exchange Ratio.

By Section 5(2)(b) of the Act the Commission in authorizing a merger may provide such terms and conditions as it finds to be "just and reasonable." One of the present terms and conditions makes provision for the ratio of stock exchange. See *Schwabacher* v. *United States*, 334 U.S. 182; *Friedman* v. *United States*, 168 F. Supp. 815, 818 (S.D. N.Y.), *aff'd per curiam*, 359 U.S. 205; *Stott* v. *United States*, 166 F. Supp. 851 (S.D. N.Y.). The Commission decided that the stock of New Company would be exchanged with the stockholders of the respective Northern Lines as follows:

Northern Pacific stockholders would receive common stock on a share for share basis. Great Northern stockholders would receive stock on a share for share basis plus one-half share of New Company's $10.00 par value 5½ percent preferred stock for each share of Great Northern stock held at the date of the merg-

er.[19] The preferred stock is to be retired, through the operation of a mandatory sinking fund, over a 25 year period beginning at the fifth anniversary of the merger. Also, the preferred stock would be redeemable at the option of New Company after the fifth anniversary in a manner not separately opposed.

The present opposition to the exchange ration is advanced by The Northern Pacific Stockholders Protective Committee, to be referred to as the Committee. It appears to represent some 3 percent of Northern Pacific stockholders holding about 5 percent of the stock of that company. We review first the manner in which the Commission arrived at the exchange ratio. We then consider the Committee's objections.

The officials of the companies, advised by experts, began discussions as early as 1955, and thenceforth engaged in extensive negotiations seeking agreement in this matter. A very important problem in determining the ratio resides in the extensive land holdings of Northern Pacific, with their values in timber, oil, gas and other minerals. This company's over-all financial advisor was Morgan-Stanley & Company, which probed various aspects of the problem deemed by these experts to be relevant. The financial adviser to Great Northern was the First Boston Company. An expert jointly available was Wyer. At a certain point in the negotiations agreement between the officers of

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[19] The Burlington stock owned by Great Northern and Northern Pacific, totalling 97.18 percent of the total outstanding Burlington stock, will be canceled but the minority stockholders of Burlington will receive 3.25 share of common stock in New Company in exchange for each share of their Burlington stock.

the two companies was reached to the effect that on the basis of railroad earnings, Great Northern would contribute 60 percent of the value of New Company to 40 percent contributed by Northern Pacific. The Committee does not question these figures. The negotiations then were devoted to seeking agreement as to treatment of the natural resources.

There was exploration of an approach by which two classes of stock would be issued by New Company, one to Northern Pacific stockholders alone from which they would derive income only from Northern Pacific's natural resources. The difficulty New Company would encounter in administering the two classes of property, with stockholders having divergent interests, opposed this possible solution. Another possibility was to spin off from its other properties the natural resource properties of Northern Pacific. This was rejected because a spin-off free of encumbrances would create problems with mortgage trustees and bond holders, with the prospect of extended litigation and the probability that it could never be consummated successfully; and if a spin-off were subject to the mortgages there would be prohibitive tax consequences. Northern Pacific concluded that the natural resource properties would have to be included in the merger.

Great Northern's proposals rested in good part upon its greater earning power to be contributed to New Company. Northern Pacific finally acceeded to the need to abandon its claim of full equality and to give Great Northern stockholders full recognition for a time at least of that company's greater earning

power. After prolonged discussions the companies agreed to the terms of the stock exchange ultimately approved by the Commission. It had been approved by the consultants of both companies, Morgan-Stanley for Northern Pacific and First Boston Corporation for Great Northern. It was also approved by applicants' respective Boards of Directors and stockholders.

The Commission, however, based its approval upon an independent determination, considering the prolonged negotiations involving arms length bargaining as evidence of fairness in the exchange ratio and concluding that the ratio reflected fairly the contributions of each group of stockholders to the combined system.

The Committee conceded that a definitive valuation would be difficult if not impossible. The Commission pointed to the fact that the Committee's real objection was to the inclusion of the natural resources and not to undervaluation of them. The Commission concluded the Committee's position was "contrary to the record, which shows that the full potential value of the natural resources properties was fully reflected in the shares allotted to the Northern Pacific stockholders." 331 I.C.C. 259.

This whole matter, including the views advanced by the Committee, was explored in great detail by the Commission. On the basis of the record upon which the Commission relied, we have no reason to rule other than that the ratio which was established, with approval of the companies and of a large majority of their stockholders, is just and reasonable. Moreover, we do not agree that the Commission should be required to reopen the record to update it. We think that such fluctuations as the Committee refers to as

possibly relevant are, as the Commission now urges, those normal fluctuations which can be expected to occur during the course of any protracted administrative proceeding and which have no effect upon the ultimate fairness of the Commission's finding. The arguments pro and con reopening cancel out each other sufficiently to leave the discretion exercised by the Commission free of abuse. *United States* v. *Pierce Auto Lines*, 327 U.S. 515, 534-35.

In conclusion on this branch of the case, although we have not specifically discussed each of the arguments advanced by the Committee, we think all significant issues regarding the ratio were fully considered and decided in a manner which requires the court to withhold any direction of its own that the ratio should be different.[20]

The Alleged Agreement of Burlington Not to Seek Entrance to the City of Milwaukee.

As has been said the applicants, after the First Report's disapproval of the merger, entered into separate agreements with Milwaukee and North Western to meet conditions the absence of which had led Milwaukee and North Western originally to oppose the merger and in part had led the Commission to disapprove it. The substance of these agreements is now required by the Commission to be met as conditions accompanying its approval. North Western withdrew its opposition and urged approval, and Milwaukee now

[20] The Commission advised that as of March 14, 1968, 73.20% of Northern Pacific's stockholders voted in favor of the merger, 2.57% against.

actively supports approval of the merger. In connection with all this, applicants have undertaken not to contest the pending merger of Milwaukee and North Western. The Department of Justice considers that these arrangements have been made to further the private interest of the railroads, to the detriment of the public interest. Moreover, the Department refers to a serious possibility, which it unsuccessfully sought to have the Commission explore, that the Milwaukee (and the North Western as well) withdrew its opposition to this merger in return for the Burlington's promise not to seek a condition in the North Western-Milwaukee proceeding giving Burlington entry into the City of Milwaukee. We accept the Commission's treatment of the matter, as follows:

> Justice views such an arrangement as an objectionable attempt by these carriers to compromise their differences at the expense of the general public, and to effect a restructuring of railroad alignments in the West with no regard for the public interest and in derogation of our statutory authority. Our duty under section 5 is to examine the proposal to determine whether it is consistent with the public interest. The fact that C&NW and the Milwaukee withdrew their opposition following the agreement does not delete from the record nor detract from the significance of the evidence they presented in opposition to the Northern Lines proposal. It is that record, as amplified on limited further hearing, and not the agreement, which justifies the result reached after reevaluation. We have the power to require protective conditions, whether agreed to or not, when the public interest demands. Accordingly, the fact that the parties may have reached

an agreement in no way relieves us of our stat
tory duty. We approach the case in that lig
without regard to alleged motivation of the pa
ties. 331 I.C.C. 243.

As to the alleged undertaking of Burlington not
seek entrance into the City of Milwaukee we think t
Commission was not required because of this to e
large the scope of the limited further hearing. T
question whether the present merger is consiste
with the public interest must be determined indepen
ently of any such undertaking. Burlington, in t
Milwaukee-North Western proceeding, has denied a
such agreement; but if it were made it does not aff
the power of the Commission to require Burlington
disregard such an undertaking should the Comm
sion deem it in the public interest in either the M
waukee-North Western proceedings or in these Nor
ern Lines proceedings. See Condition 33 of the Co
mission's Order. 331 I.C.C. 359, as modified, 3
I.C.C. 879. In determining whether to require su
action by Burlington, the Commission must
strictly in the public interest uninfluenced by any su
undertaking, if such there be. See *B. & O. R. Co.*
United States, 386 U.S. 372, 436-37, concurring op
ion of Mr. Justice Brennan; *Interstate Comme*
Commission v. *Chicago, Rock Island & Pacific Ry.* C
218 U.S. 88, 103. The Department does not all
that the suspected undertaking is in violation of la

The Question of Consolidation of Western Railro
Mergers with the Northern Lines Proceeding.

The Denver & Rio Grande Western Railroad C
pany, after the Commission's limited further hear

on reconsideration of the applications, petitioned the Commission to be allowed to present evidence on the over-all effects and cross effects of this and two other pending mergers.[21] Rio Grande also sought a withholding of decisions in this proceeding, as well as in the others, pending determination of the effects of the proposals. In denying a further hearing the Commission nevertheless recognized the importance of the effect of its decision upon the general railroad structure in the west.[22]

In the event the Commission should find other pending unifications to warrant approval, it decided to meet the problem by the exercise of its broad power to relate the pending applications to other proposals, while at the same time moving this proceeding forward in a manner deemed best to protect the public and competing rail carriers. It was decided that consolidation of the cases was unworkable and that final

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[21] These were proposals involving the Chicago and North Western Railway Company—Control—Chicago, Rock Island & Pacific Railroad Co., the *Rock Island* case, the Chicago, Milwaukee & North Western Transportation Company—Consolidation—Chicago & North Western Railway Co., and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, the *Milwaukee* case. Finance Docket Nos. 22688 and 24182.

[22] The Commission stated: "The Rio Grande request places in sharp perspective the important question of what will be the effect of our decision here upon the general railroad structure in the West generally in the event other pending western rail unifications should later also warrant our approval. While we will not follow the course of action proposed by Rio Grande, we will herein provide an effective procedure by which that impact can later be measured and appropriately dealt with." 331 I.C.C. 286.

decision in each case should not be withheld until all were ready for decision.

We have pointed out that the Commission reserved jurisdiction for a period of five years in order to impose such just and reasonable conditions as may be necessitated by any cumulative or cross-over problems stemming from approval of this merger and any other transaction authorized under Section 5 with respect to the territory involved, citing *B. & O. R. Co.* v. *United States*, 386 U.S. 372, 387. Jurisdiction was retained for a like period of five years in order to enable the Commission to consider among other things petitions under Section 5(2)(d) of the Act by any railroad in the territory involved requesting inclusion in the merger authorized. Moreover, the Commission decided that consummation of the merger would constitute irrefutable assent by applicants to the reservation of power by the Commission to impose, after hearing, such just and reasonable conditions as may be necessary and appropriate.

In its April 11, 1968, Second Report on Reconsideration, the Commission went further. Referring to the delays incident to court litigation and other factors in connection with merger proceedings but at the same time not overlooking the fact that cross-over effects, if any, would not come into being until after consummation of one or more of the proposed mergers, the Commission modified the provision for five-year retention of jurisdiction by reserving jurisdiction to alter that period if and when it is shown to be necessary or appropriate so that the period would be "5 years or such other period as the Commission may,

for good cause shown, hereafter prescribe." 331 I.C.C. 879. The Commission stated that this would not impose an undue burden on applicants or render the merger in any way inconsistent with the public interest and that at the same time it would further the congressional policy toward consolidation of the Nation's railroads. See *Brotherhood of Railroad Maintenance Employees* v. *United States*, 221. F Supp. 19, 30 (E.D. Mich.), *aff'd per curiam*, 325 U.S. 216. Apparently satisfied with the situation as it thus developed Rio Grande does not press in court any objection to the merger of the Northern Lines.

Our position is that we find no solid basis for concluding that the discretion exercised by the Commission is unreasonable. There are such cases, as illustrated by the Supreme Court's remand in *B. & O. R. Co.* v. *United States*, *supra*, where failure to afford protection for other railroads would be fatal to final approval of the merger. No showing is made in the present case of a comparable situation.[23] The manner in which the Commission moved forward while at the same time providing for readjustments in the light of the over-all situation in the territory affected as it might develop seems to the court to be reasonable in

[23] With respect to a like contention urged by Soo in opposition to the merger of the North Western and the Chicago & Great Western Railway Company, Commission treatment, similar to that involved herein, was upheld: "Concerning these facts and that the Supreme Court has not held that the Commission must consolidate all current and related merger proceedings, we hold that it was not an abuse of discretion to refuse to do so here." *Soo Line R. Co.*, v. *United States*, 280 F. Supp. 907, 913.

pursuit of the public interest as represented by the national transportation policy.

Contentions of the State of Washington.

The State of Washington contends against the merger on the basis of a provision of her constitution, article XII, section 16, prohibiting consolidation of the stock, property, or franchises of competing railroads within the State. All else aside this provision must give way to the federal power to regulate commerce among the States, which is the basis for the Act the Commission has administered in this case. That Act provides *inter alia* that carriers which merge with Commission's approval are relieved from the operation not only of federal antitrust laws but of all prohibitions of State law. 49 U.S.C. § 5(11), note 6, *supra*. *Schwabacher* v. *United States*, 334 U.S. 182, 193-197; *Seaboard Air Line R. Co.* v. *Daniel*, 333 U.S. 118, 126.

In other significant respects contentions of the State of Washington overlap those considered in portions of this opinion which concern the strengthening of the Milwaukee, the savings attributable to the merger, and the over-all competitive situation, both intramodal and intermodal.

Contentions of the City of Auburn, in Western Washington.

Auburn fears that it would be eliminated as a transcontinental freight origination and termination point with the result that the Northern Pacific yard there would be closed. Though it is not certain this

would in fact occur,[24] it is said that about half of the 500 Auburn residents employed at the yards would lose their employment and the balance would be obliged to move elsewhere if they wished to retain a job, with substantial economic loss to Auburn. None of the employees of the Northern Lines join Auburn in urging disapproval of the merger. Satisfactory arrangements have led to withdrawal of employee opposition. The Commission considered Auburn's position in the context of the whole problem. The possible adverse economic effect upon the city was thought not to justify withholding the benefits of approval. On the whole case this is a reasonable judgment of the Commission which we accept.

Contentions of the Board of Railroad Commissioners of the State of Montana, Referred to as Montana.

Montana pursues contentions, sponsored also by the Department of Justice, regarding the effect of the merger on competition, which we need not discuss anew, believing that we have already sufficiently enlarged upon our views. Montana also warns against attaching weight to approval of the merger by various elements within the State; but its principal contentions, other than with respect to the competitive situation, are against the Commission's approval of certain inter-railroad stipulations between New Company and Western Pacific, Southern Pacific and the Santa Fe, and acquisition by New Company of the

[24] The President of Northern Pacific filed an affidavit in Auburn's suit against the United States [(W. D. Washington) Civil No. 7706, filed May 3, 1968] to the effect that the Auburn yard would be maintained.

properties of motor carriers owned by Burlington, Northern Pacific and Great Northern.

On a record in which they are incorporated the Commission described the stipulations as

> [B]asically the standard routing conditions tailored to the specific situations involved, [representing] the voluntary action of free parties, each looking to its reasonable interests and those of its patrons and markets.
>
> In our opinion, these stipulations are indeed in the public interest and should be approved.

331 I.C.C. 282.

We defer to the judgment of the Commission after its full consideration of the stipulations in its Second Report, preceded by the Examiner's approval and the Commission's in its First Report. See 328 I.C.C. 480. The record, aided by the expertise involved, precludes a ruling by the court now that approval of the stipulations is unsupported by the requisite evidence or is otherwise invalid.

As to the problem of motor carriers Montana states that the Act, 49 U.S.C. § 5(2)(b), provides that if a carrier by railroad is an applicant in a case which involves a motor carrier, "the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." Montana contends that the findings thereby required were not made and that those made are not supported by requisite evidence.

Montana seems to overlook the findings of the Second Report, 331 I.C.C. 290, not only as to the public interest but also that the proposed transaction "will enable the Great Northern Pacific and Burlington Lines, Inc., as in the case of its predecessors in interest, to use service by motor vehicle to public advantage in its rail operations, and will not unduly restrain competition."

The details of the motor carrier operations are disclosed in the record. The Commission made findings that each subsidiary motor carrier would continue to operate its own equipment under its own authority and over its own routes, no new motor carrier network would be created, and the only change would be in ownership, that is, New Company in lieu of the individual applicants, with no adverse effect on competing motor carriers. The evidence in the record with respect to the details of these matters support the conclusionary factual findings of the Commission.

Contentions of Livingston Anti-Merger Committee.

The principal contention of the Committee seeks to raise for decision within the merger case a title case of great magnitude. The Committee contends that the history of the title to the properties now in Northern Pacific Railway Company, beginning with the Act of Congress of July 2, 1864 (13 Stat. 365) incorporating the "Northern Pacific Railroad Company," shows that the acquisition in 1896 of the properties by Northern Pacific Railway Company by foreclosure proceedings was invalid. This history is long in time and complicated in nature. After reviewing it with aid of the

briefs we conclude the Commission did not err in refusing to disapprove the merger because of the Committee's challenge. In *United States* v. *Northern Pacific Ry. Co.*, 311 U.S. 317, 328, though the litigation involved other issues, the Supreme Court in 1940, in tracing the title of Northern Pacific, said:

> The corporation chartered by Congress [the Railroad Company] operated the road until receivers were appointed in 1893. Pursuant to foreclosure proceedings the Northern Pacific Railway Company [the applicant] acquired title to the railroad, the land grant, and all other property of the original corporation and has since operated the road and obtained patents for millions of acres under the land grants.

And see *Northern Pacific Ry. Co.* v. *Boyd*, 228 U.S. 482, 502, holding the foreclosure sale binding between the parties though not against the creditor Boyd; *Landell* v. *Northern Pacific Ry. Co.*, 122 F. Supp. 253 (D.D.C.), where it is held that laches barred the effort there to upset Northern Pacific's title, *aff'd*, 96 U.S. App. D.C. 24, 223 F.2d 316, *cert. denied*, 350 U.S. 844. And see the opinion of Attorney General Judson Harmon, 21 Op. Atty. Gen. 486 (1897), and that of Attorney General W. H. Moody, 25 Op. Atty. Gen. 401 (1905). Mr. Moody became an Associate Justice of the Supreme Court. The Commission was not required to re-litigate the issue or to withhold approval of the merger pending possible new litigation over Northern Pacific's title. For purposes of merger proceedings it could rely on the existing judicial records in that regard, supplemented by the opinions of two

Attorneys General. Should these old problems engage the judiciary again in separate litigation placing Northern Pacific's title in issue, and any different result eventually be reached from that heretofore recorded, the effect on the merger in its then status would be for the judiciary to resolve in its decree in that litigation.

Conclusion.

To explain in a manner to carry conviction to all concerned the decision of so intricate a case is perhaps impossible. The merger, its accompanying conditions and its related transactions will bring about changes in vast enterprises which took over from the pony express, the stagecoach and the covered wagon.[25] The romance of railroad building is all but lost in the welter of data in the record before us, which has been sculptured into positions which are not adhered to with unanimity by all affected. Great expectations of an earlier era became modified by the impact of events. More rails were laid than need required as matters developed, or so it is claimed. Only time and experience can tell with greater certainty whether this is so. The Commission's present judgment, however, is not for that reason to be voided.

We think the orders in suit, considered under the criteria respectively applicable to the Commission and to this court, see *Penn-Central Merger and N & W Inclusion Cases*, *supra* at 498-99, withstand the challenges of the litigation.

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[25] The pony express carried the mail from St. Joseph to Sacramento.

The complaints accordingly will be dismissed and the orders of the Commission will be affirmed. Our order will be stayed for fifteen (15) days from its date. If within that period notice of appeal to the Supreme Court is filed and an application for further stay is made to that Court our stay will stand enlarged until determination of such application or other order of the Chief Justice of the United States, or of an Associate Justice of the Court, or of the Court itself.[26]

/s/ David L. Bazelon
Chief Judge, United States Court of Appeals for the District of Columbia Circuit

/s/ Charles Fahy
Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit

/s/ Edward M. Curran
Chief Judge, United States District Court for the District of Columbia

Date of Issuance: November 20, 1968.

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[26] See *Erie-Lackawanna R.R. Co.* v. *United States*, 279 F. Supp. 316, 356.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1132-68

UNITED STATES OF AMERICA, PLAINTIFF,

CHARLES E. BRUNDAGE, BRADFORD F. STORY, SAMUEL C. WILLIAMS, JR., WARREN CLARK, constituting THE NORTHERN PACIFIC STOCKHOLDERS' PROTECTIVE COMMITTEE, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, STATE OF WASHINGTON, CITY OF AUBURN, PUBLIC SERVICE COMMISSION OF THE STATE OF MINNESOTA, LIVINGSTON ANTI-MERGER COMMITTEE, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, DEFENDANTS,

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, PACIFIC COAST RAILROAD COMPANY, GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC., CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, 230 PACIFIC NORTHWEST SHIPPERS, PUBLIC UTILITY COMMISSIONER OF OREGON, INTERVENOR-DEFENDANTS

Before: Bazelon,* Chief Circuit Judge, Fahy,* Senior Circuit Judge, and Curran, Chief District Judge.

ORDER

Upon consideration of the whole case as submitted, and in accord with the opinion of the court issued this date, it is

ORDERED AND ADJUDGED that the complaints are dismissed and the prayers that the orders of the Commission in suit be annulled, suspended, enjoined and set aside are denied, and it is

FURTHER ORDERED AND ADJUDGED that the orders of the Commission in suit are affirmed; and it is

FURTHER ORDERED AND ADJUDGED that the stay order of May 16, 1968, entered herein by this court, is vacated; and it is

FURTHER ORDERED AND ADJUDGED that this order is stayed for fifteen (15) days from the date hereof, and if within that period notice of appeal to the Supreme Court is filed, accompanied by an application to that Court for further stay, the fifteen day period of this court's stay will stand enlarged until determination of such application or other order of the Supreme Court or of the Chief Justice of the United States or of an Associate Justice of the Court.

Per Curiam.

Dated: November 20, 1968.

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* Serving with Chief Judge Curran as members of the District Court of three judges designated by the Chief Circuit Judge by order herein of May 10, 1968.

APPENDIX C

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478 [1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY ET AL.

Decided March 31, 1966

1. Merger of the properties and franchises of Great Northern Railway Company, Northern Pacific Railway Company and Chicago, Burlington & Quincy Railroad Company, into Great Northern Pacific and Burlington Lines, Inc., for ownership, management and operation, found not to be consistent with the public interest.
2. Applications in the major and related transactions denied.

Kenneth F. Burgess, Ray Garrett, John B. Schwemm, D. Robert Thomas, Harold K. Bradford, Jr., Roger T. Crosby, E. T. Conmy, Jr., R. T. Cubbage, M. L. Countryman, Jr., Frank S. Farrell, James A. Gillen, Anthony F. Kane, Martin Lucente, Frank J. Magill, Eldon Martin, Earl F. Requa, Woodrow L. Taylor, R. Paul Tjossem, L. E. Torinus, and *James R. Walker* for applicants.

[1] This report also embraces Finance Docket Nos. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, et cetera, and 21480, Great Northern Pacific & Burlington Lines, Inc., et al.—Construction and Abandonment.

Homer G. Hamilton for the State of Nebraska, *Eldon Martin* for the State of Missouri, The Missouri Farmers Association, The Nebraska Lumber Merchants Association, the North Idaho Economic Development Association, Inc., The Quincy (Ill.) Chamber of Commerce, The Alliance (Nebr.) Chamber of Commerce, and six shippers, *Henry A. Archambo* for the Minneapolis (Minn.) Traffic Association, *I. N. Early* for the Billings (Mont.) Traffic Bureau, *H. E. Franklin, Jr.*, for the port of Tacoma, Wash., and the Tacoma (Wash.) Chamber of Commerce, *Gerald E. Franzen* for the Chicago Association of Commerce and Industry, *E. J. Hansen* for the Grand Forks (N. Dak.) Chamber of Commerce and Red River Valley Potato Growers, Association, *J. D. Paul* for the Seattle (Wash.) Chamber of Commerce and the Seattle Traffic Association, *E. C. Pewters* for the Everett (Wash.) Chamber of Commerce, *Robert B. Post* for Cargill, Incorporated, *Harry C. Sundblad* for the Omaha (Nebr.) Chamber of Commerce and the Omaha Grain Exchange, *Erv. A. Timm* for the St. Paul (Minn.) Area Chamber of Commerce, and *Lillian Widmyer* for herself, interveners in support.

John M. Agrey, *John C. Stewart*, and *Martin Vaaler* for the Public Service Commission of State of North Dakota, *John G. Alley* for the Province of British Columbia (Canada), *J. E. Finsness* for the Fargo (N. Dak.) Chamber of Commerce, and *Fred H. Tolan* for Whatcom County (Wash.) Traffic and Rates Bureau, Alaska Copper Companies, Inc., Washington-Oregon Shippers Cooperative Association, and Van Waters & Rogers, Incorporated, and 227 ship-

pers and shipper associations, interveners in conditional support.

Osborne Becklund, Charles H. Clay, F. W. Crouch and *C. Harold Peterson* for Soo Line Railroad Company, *Gene F. Bennett, Edwin R. Eckersall, J. C. Garlington, Raymond K. Merrill, Robert F. Munsell, Warren H. Ploeger, Stuart W. Rider, Jr.* and *Edwin O. Schiewe* for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *George L. Buland, Charles W. Burkett, Jr., Kenneth M. Judd, Thormand A. Miller,* and *Oglesby H. Young* for the Southern Pacific Company, *Martin Cassell* and *Thomas I. Megan* for the Chicago, Rock Island & Pacific Railroad Company, *Frank W. Davis, Jordan J. Hillman, John C. Danielson, Carl McGowan, Charles H. Dickman, Richard M. Freeman, Harry B. Otis,* and *Edgar Vanneman, Jr.,* for the Chicago and North Western Railway, *Leighton Hatch, Walter G. Treanor,* and *E. L. Van Dellen* for the Western Pacific Railroad Company, *L. W. Hobbs, Randall B. Kester, Francis J. Melia,* and *Howard E. Roos* for the Union Pacific Railroad, and *Starr Thomas* for the Atchison, Topeka and Santa Fe Railway Company, intervening rail carriers.

Elmo F. Clark, Edward F. Heitz, Charles W. Bucy, and *Joseph E. Quin* for Orville F. Freeman, Secretary of Agriculture of the United States, and *William H. Orrick, Jr., Joseph J. Saunders, Thomas S. Howard, Earl A. Jinkinson,* and *James R. Mitchell* for the United States Department of Justice, interveners in opposition.

Robert W. Mattson, Richard Musenbrock and *Walter F. Mondale* for the State of Minnesota and the Minnesota Railroad and Warehouse Commission, *C. A. Carr, Herman L. Bode* and *C. A. Merkle* for the State of South Dakota and the Public Utilities Commission for the State of South Dakota; *John J. O'Connell* and *Frank B. Hayes* for the State of Washington, *Waldo F. Wheeler, John J. Goen,* and *Leo J. Steffen* for the Iowa State Commerce Commission, and *Ronald L. Anderson, Jack L. Chestnut, Walter F. Mondale, Oliver A. Ossanna, Elmer Petersen, Paul Rasmussen,* and *Otto A. Ratke* for the Minnesota Railroad and Warehouse Commission, *John L. McKeon, John C. Sheehy, William P. Myfich* and *Paul T. Smith* for the Board of Railroad Commissioners of the State of Montana, and *Robert Y. Thornton, Lloyd G. Hammel* and *John F. Weisser* for the Public Utility Commissioner of Oregon, interveners in opposition.

Arvid M. Falk and *Keith M. Stidd* for the city of Minneapolis (Minn.), *Richard P. Gallagher* for the city of Mandan (N. Dak.), *Anthony C. Gospodar* for the city of Breckenridge (Minn.), *Daniel A. Klas* for the city of St. Paul (Minn.), *Alva C. Long* for the cities of Auburn and Sumner (Wash.) and the Auburn (Wash.) Chamber of Commerce, *Toby E. Markewicz* for the city of Superior (Wis.), *R. G. Nerison* for the city of Jamestown (N. Dak.), *Thomas E. Plante* for the city of Duluth (Minn.), *Bernard J. Gallagher* for the Spokane (Wash.), Anti-Merger Association, *George Kargianis* for the Seattle (Wash.) Improvement Council, *Thomas Kennedy* for the Mis-

soula (Mont.) Civic Group, *C. W. Leaphart, Jr.*, *W. R. McGee*, and *Webb Sullivan* for the Livingston (Mont.) Anti-Merger Committee, *Harry C. Munger* for the Duluth (Minn.) Volunteer Committee Opposing Merger, and *Robert D. McMullan* for the Clark County (Wash.) Anti-Merger Association, interveners in opposition.

Edward J. Hickey, Jr., *James L. Highsaw*, and *William G. Mahoney* for Railway Labor Executives Association, and *E. L. Dirks*, *Charles B. Falconer*, *Robert Lee Kelleher*, *Ernest Monroe*, *J. H. McLaughlin*, *Paul E. Peterson*, and *C. W. Wellnitz*, for various other organizations of railway employees, interveners in opposition.

Joseph R. Dudley for the Minnesota Motor Transport Association, *Clifford Ferguson* for Ed Benedict, and *Samuel R. Freeman* for Wheat Producers Transportation Committee, interveners in opposition.

A. Wilford Larson and *Richard V. Maves* for the Public Service Commission of Wisconsin, *A. C. Stoddard* and *John E. Tormey* for the Michigan Public Service Commission, *Louis B. Dailey* for Northern Pacific Stockholders' Protective Committee, *Philip H. Porter* for the Wisconsin Manufacturers Association, and *Oliver Lee Stewart* for Southwest Oregon Shippers Traffic Association, interveners seeking imposition of specified conditions.

Report of the Commission

Webb, *Commissioner:*

By joint application filed February 17, 1961, authority is sought by Great Northern Railway Com-

pany (Great Northern),[2] of St. Paul, Minn., Northern Pacific Railway Company (Northern Pacific), also of St. Paul, Pacific Coast R. Co. (Pacific Coast), of Seattle, Wash., Chicago, Burlington & Quincy Railroad Company (Burlington), of Chicago, Ill., and Spokane, Portland and Seattle Railway Company (SP&S), of Portland, Oreg., common carriers by railroad subject to part I of the Interstate Commerce Act, and Great Northern Pacific & Burlington Lines, Inc. (New Company), not a carrier, of Wilmington, Del., to consummate certain transactions under section 5(2) of the act, to issue certain securities and assume obligation and liability in respect of securities under section 20a of the act, and to effect certain extensions and abandonments of lines of railroad under sections 1(18) to 1(20), inclusive, of the act.

The several docketed applications are described fully and correctly at pages 7-10, inclusive, of the recommended report. These applications are interdependent parts of a proposal for the unified operation, control and management of the Northern lines (Great Northern and Northern Pacific), Burlington, and SP&S.

Extensive public hearings were held beginning October 10, 1961, and ending July 10, 1962. The examiner's report recommended approval of the merger and related transactions, subject to various conditions, and was served August 24, 1964. Exceptions to the

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[2] In this report reference to applicants and interveners and others mentioned will be by the distinctive names in their respective corporate titles or by the designation shown in parentheses.

recommended report and replies thereto were filed by numerous parties. Oral argument before the Commission was held on June 16, 1965.

Charges of Lack of a Fair Hearing

Before considering this proceeding on the merits, we made an exhaustive examination of the record to determine whether there was any substance to the charges concerning lack of a fair hearing. We are convinced that such charges are totally lacking in merit. Our reasons for reaching this conclusion are explained fully in the Report of the Commission on Petitions for Rehearing served concurrently with this report.

Operations and Properties of the Applicants

The corporate status of the applicants, together with the financial transactions involved in consummating the proposed merger, are set forth correctly and in detail at pages 21-22, 27, 33, 38-39, and 57-88 of the recommended report. In view of our reasons for finding that approval of the proposed merger would not be consistent with the public interest, it is unnecessary to discuss the financial implementation of the proposal.

Great Northern's railroad operations are conducted over 8,277 miles of road, of which 4,355 are main lines and 3,613 are branch lines.[3] Its principal main lines of railroad are located in 10 States [4] and 2 Cana-

[3] The figures cited reflect operations as of December 31, 1960.

[4] Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Montana, Idaho, Washington, Oregon, and California.

dian provinces,[5] extending from Duluth, Minneapolis, and St. Paul, Minn., Superior, Wis., and Sioux City, Iowa, westerly to Seattle, Wash., and other western cities, including Vancouver, B. C., and Portland, Oreg. Great Northern's principal branch line mileage is in Minnesota and North Dakota. A line also extends southerly through central Oregon to Bieber, Calif., over a portion of which between Chemult and Klamath Falls, Oreg., it operates over the tracks of Southern Pacific. Its principal points of interchange with other railroads, in addition to the terminal points mentioned above, are Laurel, Billings, Butte, and Sweetgrass, Mont., Spokane, Chemult, and Noyes, Minn., Northgate, N. Dak., New Westminster, B. C., and Winnipeg.[6]

Northern Pacific conducted operations as of December 31, 1960, over 6,800 miles of road, of which 2,784 were main line and 4.016 miles were branch line. Its principal main lines of railroad are located in seven States[7] and the Canadian Province of Manitoba, and extend from St. Paul and Minneapolis, and from Superior and Ashland, Wis., and Duluth, westerly via Fargo and Bismarck, N. Dak., Billings, Butte and Helena, Mont., Spokane, Seattle and Tacoma, Wash., and Portland. Branch lines connecting with

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[5] Manitoba and British Columbia.

[6] A more detailed description of Great Northern's property and equipment and that of its subsidiaries and affiliates may be found at pages 23-27 and in appendix E of the recommended report.

[7] Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon.

the principal main lines serve the agricultural and lumber producing territories which are intermediate, and a line extending to a connection with its affiliate, Midland, at Pembina, N. Dak., and International Falls, Minn., enables it to serve Winnipeg. Its principal points of interchange are at St. Paul, Duluth, Ashland, Superior, Laurel, Billings, Butte, Spokane, Seattle, Pasco and Portland. Internationally, the principal points of interchange with other carriers by railroad are at Sumas, Wash., Pembina, and Winnipeg.[8]

In addition to its transportation properties and other investments, Northern Pacific has large land holdings which are important sources of income. Most of the lands were part of the land grant made by the Act of Congress of July 2, 1864, incorporating the Northern Pacific Railroad Company and granting lands to encourage construction of the railroad from Lake Superior to Puget Sound by the northern route, so as to bring about settlement and development of that region, add value to the government lands therein, and establish facilities for the transportation of mail, troops, munitions and public stores to and from the west coast. To aid in the construction, 39,473,369 acres of alternate, odd-numbered sections of nonmineral public lands were granted originally, together with a right of way of 200 feet on either side of the railroad where it passed through the public domain

[8] A more detailed description of Northern Pacific's property and equipment and that of its subsidiaries and affiliates may be found at pages 27-33 and in appendix E of the recommended report.

and necessary lands for station buildings, shops and other appurtenances. The rights to them were acquired by Northern Pacific at foreclosure and sequestration sales following foreclosure in 1896 of mortgages placed on the railroad and land grant by the federal corporation.

As of December 31, 1960, Northern Pacific and its subsidiaries owned in fee, 2,236,992 acres of land (with the exception of certain minerals in 23,177 acres) in Wisconsin, Minnesota, North Dakota, Montana, Wyoming, Idaho, Washington, and Oregon; and certain mineral rights in an additional 6,075,659 acres of land in those eight States. In 1961, Northern Pacific's net income of $5,913,216 from the natural resources properties, without certain deductions, was more than one-third of the total net income of $16,313,322.

Northern Pacific's gross revenues from timber, oil and gas and other minerals for the 10-year period 1951-60, were as follows:

Year	Timber	Oil and gas	Other minerals	Total
1951	$677,224	$695,520	$551,890	$1,924,634
1952	851,253	851,253	511,449	2,144,076
1953	615,771	987,017	599,160	2,201,948
1954	1,023,063	1,327,019	1,023,711	3,373,793
1955	1,400,000	1,686,153	1,001,885	4,088,038
1956	1,914,538	3,209,362	1,224,277	6,348,177
1957	1,343,951	6,004,294	1,326,927	8,675,172
1958	2,036,313	7,074,439	752,639	9,863,391
1959	3,950,927	7,618,894	519,881	12,089,702
1960	3,584,685	7,387,183	517,457	11,489,325

Burlignton's railroad operations are conducted on 8,648 miles of road, of which 5,111 are main lines and 3,536 are branch lines. Its principal main lines of railroad are located in 11 States [9] and extend from

[9] Illinois, Iowa, Kansas, Colorado, Minnesota, Missouri, Montana, Nebraska, South Dakota, Wisconsin, and Wyoming.

Chicago, Ill., northwesterly to St. Paul and Minneapolis, and from Chicago westerly and southwesterly to St. Louis and Kansas City, Mo., Omaha and Lincoln, Nebr., Denver, Colo., and Billings and Huntley, Mont. Connecting main lines extend to Peoria and Rockford, Ill., Des Moines and Sioux City, Iowa, Deadwood, S. Dak., and via the line of a subsidiary (Paducah & Illinois Railroad Company) to Paducah, Ky. It maintains an extensive branch line system, principally for grain in Nebraska and Kansas. Its principal points of interchange are at Chicago, Peoria, and East St. Louis, Ill., St. Joseph, Kansas City and St. Louis, Mo., Omaha and Grand Island, Nebr., Council Bluffs and Sioux City, Iowa, St. Paul, Minneapolis, Denver, Billings, Laurel and Paducah.[10]

Pacific Coast's railroad operations are all located within King County, Wash., and comprise 32 miles of road, all of which it owns. Pacific Coast provides freight service only. It does not own any motive power, rolling stock, or major maintenance equipment. Such items of equipment as it requires are leased from Great Northern.

SP&S road operations are conducted in Washington and Oregon on 599 miles of road, of which 515 are main line. The main lines of SP&S extend from Spokane westerly along the Snake and Columbia Rivers to Portland, and from Willbridge, Oreg., to

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[10] A more detailed description of Burlington's property and equipment and that of its subsidiaries and affiliates may be found at pages 34-38 and in appendix E of the recommended report.

Seaside, Oreg. The principal points of interchange are at Spokane, Pasco, Vancouver, and Wishram, Wash., and Portland, East Portland, North Portland, Willbridge, Bowers Junction, and Linnton, Oreg.[11]

The SP&S is owned jointly by the Great Northern and Northern Pacific. Its main line provides the most direct route from Spokane to Portland. Since Spokane lies on the main transcontinental routes of the Northern Lines and Portland is an important terminal for both, the strategic importance of the SP&S is obvious. Through ownership of the SP&S the Northern Lines have been able to deny to their chief competitor, the Milwaukee Railroad, access to Portland. If the line of the SP&S did not exist, Great Northern would be required to reach Portland from Spokane via Everett, Wash., and the Northern Pacific via Auburn, Wash.

To summarize, applicants' operations are conducted primarily in the Midwest and South Central Plains, the northern portions of the Central Plains, the Great Plains, Mountain and Pacific Territory. The major transcontinental routes of Great Northern and Northern Pacific operate generally through the same northern States between the Twin Cities (St. Paul and Minneapolis, Minn.) and Puget Sound, and the Pacific Northwest. The major transcontinental routes of Burlington are between Chicago and the Twin Cities,

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[11] A more detailed description of the property and equipment of SP&S and that of its subsidiaries and affiliates may be found at pages 39-40 and in appendix E of the recommended report.

and between Chicago and Kansas City, Omaha and Denver. The lines of SP&S form part of the through routes to Great Northern and Northern Pacific on traffic to and from northwest coast terminals.

The main lines of the two Northern Lines are geographically parallel but the greater part of the mileage of the Northern Pacific is on the western part of its system, while most of the mileage of the Great Northern is on the eastern part of its system. Since the Northern Lines serves the same Pacific ports, the same lake ports, the same large eastern terminals, and the same tier of States over paralleling lines, each line is the most agressive and important competitor of the other. The Northern Lines have controlled the Burlington for more than 60 years through the ownership in equal amounts of approximately 97 percent of the Burlington's total capital stock. There is no substantial competition, however, between the Burlington and either of the Northern Lines. Their operations are essentially complementary rather than competitive.

Applicants' Traffic

The States served by the Northern Lines produce a vast quantity of forest, agricultural, and mineral products. The consist and volume of traffic of the Great Northern and Northern Pacific are similar. Their traffic differs to some extent, however, because the lines of the Great Northern and Northern Pacific are widely separated at some points. The traffic consist of the Burlington differs from that of its parents in that forest products comprise a much smaller pro-

portion of the total while manufacturers and miscellaneous traffic is larger than that of either of the two Northern Lines.

The area served by the Burlington is more heavily populated than the territory served by the Northern Lines. The Burlington's service area is complementary to that of the Northern Lines and provides an important market for the raw and semi-finished products of the fields, forest and mines served by the two Northern Lines. Burlington has connections at Chicago and Peoria, Ill., and St. Louis with other trunk and terminal lines serving large steel, machinery, and manufacturing plants that find a market in the Pacific Northwest. In addition, Burlington serves many packinghouse centers of the midwest, including Omaha, Denver, Chicago, Kansas City, St. Louis, and St. Joseph. Burlington serves the common terminals of Twin Cities, Sioux City, and Laurel, at which common points a large volume of freight is interchanged with the Northern Lines.

The tables below indicate for the three major applicants, total carloadings, gross freight revenues and the percentage of system revenue derived from each of the pirncipal commodity groupings for 1960 and for 1963, the latest year for which comparable data is available.[12] In this report, we have taken official

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[12] Commodity data for 1964-65 is reported pursuant to the new commodity classification prescribed by the Commission's order in *Commodity Classification for Reporting Purposes*, 323 I.C.C. 185, which is not comparable with that of earlier years.

notice of certain data contained in or based on carriers' reports to the Commission for years subsequent to 1960 or 1961. Pursuant to the provisions of section 7(d) of the Administrative Procedure Act, any party challenging such officially noticed facts will be afforded an opportunity to set forth its objections.

GREAT NORTHERN

Group	Carloads	Gross freight revenue	Percent of systems carload revenue
Products of agriculture			
1960	216,313	$70,219,799	31.68
1963*	216,574	67,844,302	30.86
Animals and products			
1960	21,447	3,896,599	1.76
1963*	17,529	3,340,237	1.52
Products of mines			
1960	418,697	40,250,458	18.16
1963*	338,993	35,160,811	15.99
Products of forests			
1960	119,037	37,900,327	17.10
1963*	121,934	39,975,008	18.18
Manufactures and miscellaneous			
1960	251,799	63,831,964	28.80
1963*	252,414	68,528,765	31.17
Forwarder traffic			
1960	15,976	5,572,127	2.50
1963*	15,063	5,013,140	2.28
Total carload traffic			
1960	1,043,269	221,671,274	100.00
1963*	962,507	219,862,263	100.00

*1963 data obtained from carriers' annual reports.

NORTHERN PACIFIC

Group	Carloads	Gross freight revenue	Percent of systems carload revenue
Products of agriculture			
1960	134,272	$32,022,139	20.58
1963*	144,677	35,326,711	21.59
Animals and products			
1960	20,136	4,090,623	2.63
1963*	15,020	2,974,145	1.82
Products of mines			
1960	100,780	12,707,165	8.17
1963*	95,494	12,683,343	7.75
Products of forests			
1960	167,330	46,301,843	29.76
1963*	168,543	47,349,016	28.94
Manufactures and miscellaneous			
1960	221,780	58,013,482	37.29
1963*	226,246	63,301,323	38.69
Forwarder traffic			
1960	7,131	2,435,382	1.57
1963*	5,558	1,987,082	1.21
Total carload traffic			
1960	651,429	155,570,634	100.00
1963*	655,538	163,621,620	100.00

*1963 data obtained from carriers' annual reports.

BURLINGTON

Group	Carloads	Gross freight revenue	Percent of systems carload revenue
Products of agriculture			
1960	281,331	$47,989,589	22.69
1963*	313,843	51,670,128	23.03
Animals and products			
1960	101,884	17,149,764	8.11
1963*	81,876	14,466,268	6.45
Products of mines			
1960	299,909	32,668,625	15.45
1963*	322,485	34,264,927	15.27
Products of forests			
1960	83,690	14,409,752	6.81
1963*	82,078	16,020,189	7.14
Manufactures and miscellaneous			
1960	474,116	89,448,715	42.29
1963*	498,810	98,314,159	43.81
Forwarder traffic			
1960	72,453	9,838,153	4.65
1963*	70,497	9,661,446	4.31
Total carload traffic			
1960	1,313,383	211,504,603	100.00
1963*	1,369,589	224,397,117	100.00

*1963 data obtained from carriers' annual reports.

The table below shows on a consolidated basis for the years 1960 and 1963 the freight revenues and distribution of carload revenue for the three major applicants and the SP&S.

CONSOLIDATED FREIGHT REVENUES AND DISTRIBUTION OF CARLOAD REVENUE

Group	Gross freight revenue	Percent of total carload revenue
Products of agriculture		
1960	$157,312,691	25.41
1963*	159,916,398	25.02
Animals and products		
1960	25,388,232	4.10
1963*	20,967,280	3.28
Products of mines		
1960	86,741,606	14.01
1963*	83,281,707	13.03
Products of forests		
1960	110,253,715	17.81
1963*	116,459,836	18.22
Manufactures and miscellaneous		
1960	220,880,712	35.68
1963*	241,099,497	37.72
Forwarder traffic		
1960	18,533,964	2.99
1963*	17,412,657	2.72
Total carload traffic		
1960	619,110,920	100.00
1963*	639,137,375	100.00

*1963 data from carriers' annual reports.

The flow of traffic between the Pacific Northwest and Midwest and Eastern territory is unbalanced. The larger volume is from west to east and consists mainly of raw materials and semi-finished products of agriculture, mines and forests. The territory served by the Northern Lines is an important market for finished products of the East and Midwest. As a result of industrial decentralization, however, a larger volume of manufactured commodities is now being produced in California and shipped to the territory served by the Northern Lines.

The rail hauls of the Northern Lines are among the longest in the world. As noted by the examiner, the inherent advantages of rail transportation tend to increase with distance, while its inherent disadvantages tend to decrease with distance. Furthermore, the agricultural, forest, and mineral products handled in large quantities by the applicants over extremely long distances are not highly susceptible to diversion by motor carriers. In the area in which the Northern Lines operate, water transportation provides less competition than in any other region of the United States. Although commodities in the manufactured and miscellaneous groups are more vulnerable to diversion, a comparison of carloadings for 1960 and 1963 indicates moderate increases in carloadings for both the Great Northern and the Northern Pacific and more substantial increases for the Burlington. Gross freight revenues also show increases of nearly $10 million in 1963 over 1960 for the Burlington while increases of over $5 million and $4,600,000 were re-

corded for the Northern Pacific and the Great Northern, respectively.

Financial Conditions of the Major Applicants

Great Northern, Northern Pacific, and Burlington are large, strong, and prosperous railroads. And, they are growing stronger. Their financial health is not merely the result of a booming national economy. Even during the Great Depression, each of the major applicants showed substantial earnings. During each of the years 1930-1939, inclusive, each of the major applicants earned a net railway operating income.[13] If there is any significant threat to the financial well-being of the major applicant railroads, the plight of most of the Nation's railroads must be regarded as hopeless.

The general balance sheets giving effect to the proposed mergers of August 1961 and income statements comparing the years 1958-60 with 1964 for the three major applicants are attached hereto as appendix A. As noted in the recommended report at page 50, the excess of current assets over current liabilities as of August 31, 1961, produced a net working capital position for Great Northern, Northern Pacific and Burlington of $32.6 million, $73.4 million, and $28.9 million, respectively, or a combined total of $134.9 million before adjustments and elimination of intercompany balances. The net working capital position for

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[13] In appendix I-10 of the recommended report, net railway operating income of the major applicants is set forth for the years 1926-1961, inclusive.

Great Northern, Northern Pacific and Burlington which exceeds by $18.2, $62.6 and $13.9 million, respectively, the mean monthly average of their respective operating expenses, less depreciation, for the first was found by the examiner to be "more than adequate to meet normal requirements." We agree with that conclusion.

Income statements for the Great Northern, Northern Pacific, and Burlington for the years 1958-1965, inclusive,[14] show the following:

Great Northern

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$251,671,504	$27,577,798	75.04	4.52
1959---	254,559,530	28,558,273	77.43	4.35
1960---	246,024,650	20,723,214	78.87	3.41
1961---	232,951,918	18,632,420	79.44	3.07
1962---	238 940 423	25,018,986	78.60	4.12
1963---	242,810,448	29,273,689	76.75	4.80
1964---	250,387,871	28,866,329	77.86	4.71
1965---	265,629,604	36,409,825	75.70	----------

Northern Pacific

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$179,107,731	$22,011,976	79.87	3.68
1959---	183,608,782	23,781,165	79.74	3.97
1960---	174,915,492	18,547,194	84.54	3.10
1961---	165,412,453	16,313,322	86.60	2.72
1962---	174,262,934	20,300,535	86.02	3.39
1963---	179,604,511	24,592,470	84.98	4.09
1964---	184,300,791	23,500,657	85.32	3.90
1965---	197,913,432	28,032,797	82.70	----------

[14] Figures for the years 1961-1964, inclusive, were taken from the carriers' annual reports filed with the Commission, except for 1965 data which is taken from the carriers' quarterly reports of revenues expenses and selected income items (Forms R & E, 1BS) for the fourth quarter of 1965, showing cumulative figures for the year.

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$258,027,700	$19,491,732	77.61	11.41
1959---	263,072,883	17,696,143	79.78	10.36
1960---	251,135,890	12,493,138	81.21	7.31
1961---	254,160,812	14,408,666	79.44	8.43
1962---	263,434,538	20,412,904	78.92	11.95
1963---	261,713,684	21,367,648	79.69	12.51
1964---	267,379,529	20,355,342	81.25	11.91
1965---	270,453,376	16,693,090	82.00	----------

Comparisons between railroad earnings in recent years and those of 3 or 4 decades ago must be drawn with care. For example, the examiner noted that the combined net railway operating income of the three major applicants in 1960 was only about half of what it was in 1926. On the basis of such a comparison, the examiner concluded that the financial condition of the applicants has steadily deteriorated and that their economic future, in the absence of merger, is bleak. A comparison of applicants' earnings in one of the worst railroad transportation years in recent history with their earnings 35 years before, when rail carriers held a virtual monopoly in surface transportation, may be statistically correct but it does not support the examiner's pessimistic conclusion.

Alleged Benefits of the Proposed Unification

The prospective benefits of the proposed unification as viewed by the applicants, supporting shipper witnesses, and supporting interveners are reviewed in considerable detail at pages 146-169, 171-189, and 323-340, respectively, of the recommended report. Accordingly, we will merely summarize the examiner's findings on this aspect of the case.

In general, applicants contend that the consolidation of their properties under single ownership and management would result in better utilization of equipment, elimination of duplicate facilities at common points, and more expeditious transportation service. As a result of savings expected to be derived from the proposed unification,[15] applicants hope to meet more effectively the competition of other modes of transportation.

Anticipated improvements in freight schedules are based mainly on the consolidation of terminal facilities at common points and the use of the shortest of most efficient internal routes available to the unified company. Applicants indicate that the New Company would establish through transcontinental freight routes over the shortest available lines and the most favorable grades. Applicants gave numerous examples of improved freight schedules that could be established following consummation of the mergers. For example, applicants indicated that the fastest schedule of the Great Northern from Seattle to Chicago would be reduced by the New Company from 94 hours and 15 minutes to 82 hours and 30 minutes or 11 hours and 45 minutes faster than the present schedule. The fastest transcontinental eastbound train of the Northern Pacific leaves Seattle at 9:00 p.m. and arrives Chicago 12:15 p.m. on the 5th day, a total elapsed time of 97 hours and 15 minutes. After unification, the departure time would be 8:30 p.m. and arrival time at Chicago would be 10:30 a.m. on the

[15] See pages 58-63, *infra*.

morning of the 8th day, a total elapsed time of 84 hours, or 13 hours less than present schedule.

After the hearings, however, applicants announced faster transcontinental freight schedules in response to faster schedules established by the Milwaukee. In their reply to exceptions, applicants note that the eastbound schedule time for the Great Northern from Seattle to Chicago has been reduced to 67 hours and 35 minutes, and that the time for Northern Pacific has been reduced to 69 hours and 35 minutes. It would appear, therefore, that competition between the Northern Lines and the Milwaukee has resulted in a considerably faster service than that claimed as one of the advantages of unification. In fairness to the applicants, however, it should be pointed out that the expedited schedules require the use of shorter and lighter trains than those contemplated in their direct evidence. We recognize that the proposed unification could result in generally faster freight service but, as the post-hearing freight schedules indicate, the extent of such improvement is speculative and competition is a more important factor than consolidation.

Applicants also contend that following unification, shippers would have not only the routes presently available under published tariffs, but additional routes involving the lines of the component railroads in any combination except where undue circuity would result. Such benefits would be derived by opening up the intermediate junctions to form cross-over routes between Northern Pacific and Great Northern west of Twin Cities and new routes between them and Burlington at Billings and Sioux City. As pointed out

by the examiner, those routes have been historically closed in order to preserve to the two Northern Lines their respective maximum hauls. The economic advantages envisioned by applicants from a wider choice of routing include the extension of transit and stop-off privileges at numerous additional points, and increased opportunities for diversion of shipments to meet shippers' requirements.

Ordinarily, traffic on one of the component railroads today can be given transit privileges only at points on the same railroad en route to primary markets. The basic reason for such a restriction is that the railroad which provides service to the primary area thereby protects its long haul and the revenues therefrom. The propriety of a railroad protecting its long haul is specifically recognized in section 15(4) of the Interstate Commerce Act.

The expansion of transit privileges would benefit the producers and processors of numerous commodities, as would the expansion of tariff provisions enabling shippers to stop through shipments for additional loading or for partial unloading at an intermediate point between origin and destination, at the through carload rate plus a charge for the service of stopping the car.

In the general area served by applicants, shortages of freight cars, especially general purpose boxcars, have been chronic and severe in recent years. Applicants claim that substantial savings will result from more efficient utilization of freight cars by the merged company and from unifying the car fleets of the com-

ponent lines.[16] Today, when 2 or more of applicants serve the same point and obtain traffic from the same shipper, each tries to hold sufficient cars to protect the loading requirements. New Company would do the same thing, but the total number of cars held would be reduced in proportion to the number of component companies serving the common point. These savings cannot be reliably estimated but they would be derived solely from the elimination of competition.

As pointed out by the examiner, applicants have given no assurances that freight rates would be reduced following unification. However, applicants anticipate that the economies from unification will tend to hold down the amount of rate increases in future years.

The tracing and location of shipments and the ordering of empty cars would be facilitated under unification, since the records would be maintained and be readily available under centralized control and responsibility. Similarly, the processing of claims by shippers for loss and damage would be simplified. Because of the reduction in the number of switch movements through elimination of interchange among the applicants and through improved yard facilities, some reduction in damage to cargo from switching should result.

Prior to the filing of the applications, extensive public relations efforts were instituted by applicants

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[16] As indicated at page 93 of this report, infra, benefits flowing from improved freight car utilization would be offset by the loss of competition which now encourages applicants to satisfy the demands of shippers at common points.

to publicize the advantages of the proposed unification. Officials, counsel and other representatives of applicants participated in meetings of trade associations, industry promotion groups, chambers of commerce, and other persons in the territory involved. Interested persons were asked to support the applications by offering testimony at the hearings, and to forward letters and resolutions endorsing applicants' objectives.

Partially as a result of this public relations campaign, 307 witnesses (237 shippers and receivers of freight, 39 representatives of shipper associations, and representatives of various business and civic organizations) testified in support of the proposed unification. Of the total number of shipper and other public witnesses, the great majority supported the proposal. Their testimony reiterates the prospective public benefits asserted by applicants, is fairly summarized in the recommended report, and need not be further discussed in this report.

Almost 400 individuals, firms, associations, civic groups, and municipalities intervened in support of the proposed merger, although some urged that particular conditions be imposed. A total of 292 of these intervening parties were shippers or receivers of freight, or others directly interested in transportation services. Their position, as well as that of intervening shipper associations and chambers of commerce, is generally the same as that of the applicants.

Position of Governmental and Railway Labor Interveners

A total of 11 States or State regulatory commissions intervened. Only the States of Nebraska and Missouri supported the merger substantially as proposed by applicants. The other States or their regulatory commissions either opposed the merger with little or no regard to conditions that might be imposed [17] or urged the imposition of conditions that are strongly opposed by applicants.[18] Thus, most shipper and related transportation interests in the territory involved support the applicants' case, while most of the affected States, as well as some of the major terminal cities affected by the Northern Lines merger,[19] express varying degrees of opposition. This conflict makes it difficult, of course, to appraise the impact of the proposed merger on the general public.

If the weight of the testimony were determined on the basis of numbers of witnesses, we would have no difficult in finding, as did the examiner, that the gen-

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[17] Oregon, Minnesota, Montana and Washington. The Governor of Washington, then newly-elected, advised the Commission on the eve of oral argument that he does not oppose the merger.

[18] North Dakota, Michigan, Iowa, and South Dakota. Wisconsin neither supported nor opposed the merger and recommended no specific conditions. Although the Governor of the State of Iowa testified generally in support of the merger, the Iowa Commerce Commission strongly opposed the merger except with conditions vigorously opposed by applicants.

[19] E.g., Superior and Milwaukee, Wis., Duluth, Minneapolis and St. Paul, Minn., and Auburn, Wash.

eral public overwhelmingly supports the proposed merger. Shippers, of course, are a part of the general public and their testimony is entitled to great weight. However, we believe that this public support is counter-balanced by the opposing testimony and arguments of vitally affected agencies of government—Federal, State, and local.

The Department of Agriculture intervened because of its dual interest as a representative of the Nation's farmers and as the largest single shipper or [sic] agricultural commodities. Agriculture contends that if the Commission should determine that the unification be approved, the following conditions should be imposed: (1) that all existing gateways among the railroads seeking merger and competing railroads be maintained under through routes and joint rates; (2) that additional gateways, through routes and joint rates be established between the New Company and competing railroads so as to accord producers, shippers, and receivers adequate access to all markets and to all sources of supplies; and (3) that no lesser quality of service than at present be furnished over any of the existing main or branch lines of the railroads included in the merger without approval of the Commission. Conditions (2) and (3) were opposed by applicants and not recommended by the examiner.

The Department of Justice contends that the only benefits from the proposed unification and the elimination of competition as between the two Northern Lines would be increased revenues to applicants at the expense of competing and connecting railroads; that applicant lines are in a sound, healthy financial

condition; that the Northern Lines compete vigorously with each other; that important advantages of rail competition would be lost if the merger is approved; and that such approval would contravene the policy of the anti-trust laws and cannot be found to be consistent with the public interest within the meaning of section 5(2) of the act.

More specifically, Justice contends that the proposed merger, if approved, would (1) destroy the competition which now exists among and between Great Northern and Northern Pacific; (2) seriously damage and eventually jeopardize the existence of intervener Milwaukee; (3) result in a rail monopoly in a geographical market area extending from Twin Cities to the northwest Pacific coast along the northern tier of States; (4) seriously injure other competing railroads and other competing carriers by diverting freight revenues from them; (5) deprive many communities and shippers of the advantages and benefits of competitive rail service; (6) impair adequate transportation in a growing region of the country; (7) impose an unnecessary hardship on many communities and shippers; (8) have an adverse effect upon Federal establishments and would not benefit national defense; and (9) would stimulate new merger applications by and among railroads competing with applicant lines and each other in order to attempt to offset the power of the New Company.

The Railway Labor Executives Association (RLEA) intervened in opposition to the merger and to protect the interests of affected employees. The examiner found that the merger would eliminate approximately

8,072 jobs and would require 2,900 employees to change their present job locations to other points where the merged company would operate. Thus, the examiner found that the merger would result in a net loss of 5,172 jobs. This loss would not be fully realized, however, until after 5 years following consummation. The examiner also found that at July 1, 1960 price and wage levels, payroll costs would be reduced approximately $32,670,000 annually as a result of consummation of the proposed merger. In other words, he found that approximately 81.9 percent of the savings anticipated from the merger would be derived from reductions in the labor force.

The examiner found that approximately 80 percent of the employees losing their jobs as a result of the merger could be re-employed by the merged company within 1 year, and at the same location, in jobs created by normal attrition. He also found that another 908 could be re-employed within 1 year by transfer to jobs for which they are qualified at other points. Applicants estimate that the cost of providing protection to adversely affected employees would be $4,961,728.

In general, RLEA contends (1) that applicants have failed to show clearly any public gain to be derived from the proposed unification; and (2) that the unification "will not only result in no public gain but will do positive injury to the public interest." Moreover, it contends that the adverse effect on employees involved, their families and the communities in which they live, when coupled with other adverse effects, warrants denial of the applications as not consistent

with the public interest. It argues that this would be no merger of the weak with the weak, or the strong with the weak, but a three-way merger of the strong with the mighty.

RLEA also fears that the proposed unification, by adversely affecting other carriers through diversion of traffic, would also injure numerous employees on other railroads. Accordingly, RLEA asks, if the merger is approved, that protection be afforded employees of all carriers adversely affected by the proposed unification.

In view of our ultimate conclusion that the proposed unification is not consistent with the public interest, it is not necessary to discuss the contentions of RLEA and applicants relative to the conditions that should be imposed for the protection of adversely affected employees.

Position of Railroad Interveners

Ten major railroads[20] intervened in order to secure routing and other traffic conditions designed, in general, to prevent undue diversion of traffic not presently handled by the applicant railroads. In *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455 (1950), the Commission prescribed a set of conditions for the protection of connecting carriers. Since then, conditions is [sic] substantially the same form have been imposed in

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[20] Sante Fe, Milwaukee, North Western, Rock Island, Denver and Rio Grande Western Railroad Co., Illinois Central, Soo Line, Southern Pacific, Union Pacific, and Western Pacific. The Denver Rio Grande and the Illinois Central did not participate in the hearings or oral argument.

numerous proceedings under section 5(2) of the act and have become known as the "standard routing conditions." See *Pennsylvania R. Co.—Control—Lehigh Valley R. Co.*, 317 I.C.C. 139, 151. In their application, applicants proposed 6 conditions similar to the conditions imposed by the Commission in other merger or control transactions.

During the hearings, applicants offered certain clarifying changes in their proposed conditions. These changes were incorporated in a stipulation entered into between applicants and Union Pacific. Subsequently, the Rock Island, Southern Pacific, Western Pacific, Santa Fe, and Soo Line, concurred in the form and substance of the general conditions contained in the stipulation between applicants and Union Pacific. Those conditions deal with such matters as the continuance of operating arrangements between applicants and connecting carriers and the continued application of existing rates over joint routes generally used between the origins and distinations involved.

Special traffic conditions were urged by Southern Pacific, Western Pacific, Santa Fe, and Soo Line; were accepted by applicants; and were approved by the examiner. The special conditions involved these 4 carriers are opposed by the Department of Justice.[21] For the reasons stated by the examiner at pages 236 and 237 of his recommended report, we do not agree with Justice that the stipulations in question are un-

[21] The Milwaukee excepts to Condition 9(b) of the examiner's report on the ground that Southern Pacific would be required to solicit against it on traffic moving through the Portland gateway.

just, unreasonable, and contrary to the public interest. In general, these agreements respecting special traffic conditions, by reducing anticipated diversion of traffic, eliminated opposition by intervening carriers to the merger as originally proposed. In view of our ultimate conclusions herein, no detailed discussion of the special traffic conditions is necessary.[22]

Conditions Sought by North Western and Milwaukee

Whether the proposed merger is consistent with the public interest depends to a considerable extent on the conditions which are necessary to enable the North Western and the Milwaukee to compete successfully against the New Company. The former is a substantial competitor of the Northern Lines and the Burlington, while the latter would be completely engulfed by the lines of the New Company. Neither intervener is a match for the New Company in terms of size, earnings, financial strength and economic capability. Neither can provide the quantity and quality of service made possible by the proposed merger. In fact, if the Milwaukee and the North Western were protected only by the standard routing conditions proposed by applicants, the North Western would be materially weakened and the Milwaukee's ability to survive would be highly doubtful. Both the North Western and the Milwaukee now provide essential and efficient rail service to hundreds of com-

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[22] A full discussion of these matters may be found at pages 226-237 of the recommended report.

munities that would not be served by the New Company.

If all the conditions sought by the North Western and the Milwaukee were to be imposed, the benefits derived by applicants from the proposed merger would be minimal. In fact, applicants indicate in their pleadings that imposition of all the sought conditions might preclude consummation. Failure to impose a number of the important conditions sought by the North Western and the Milwaukee would preclude a finding that the merger is consistent with the public interest. The balance of this section of the report will be devoted to a discussion of this aspect of the proposed merger.

The importance of the conditions sought by the North Western and the Milwaukee is reflected in the position of numerous parties who intervened on behalf of a large segment of the general public. Such interveners, who are now opposed to the merger as proposed or whose support is qualified, would favor approval of the transaction if it were conditioned substantially as proposed by the North Western or the Milwaukee. These interveners include or represent the States of Iowa, North Dakota, Michigan, Wisconsin and South Dakota; and the U. S. Department of Agriculture.

For many years the operations of the North Western have been marginal in nature and its earnings erratic. From 1952 to 1961, it suffered serious losses in all but 5 years, its cumulative net loss amounting to about $6 million. As the examiner noted, at the time the record in this proceeding was closed, the

North Western had made no dividend payments on common stock since 1950 and no payments on preferred stock since 1954. During the past several years, the North Western has enjoyed a modest net income. However, it is unlikely that the North Western's earnings in the reasonably near future will equal in size and consistency the earnings of any one of the 3 major applicants.

The North Western serves 9 States [23] and operated, in 1961, over 10,702 miles of track, with a total of 15,637 employees. The westernmost points of connection with lines providing transcontinental service are at Crawford, Nebr. connecting with Burlington, and at Oakes, N. Dak. connecting with Northern Pacific. The North Western has a total of 222 junction points, of which 57 connect with applicants, where it can interchange traffic with one or more railroads. Its most important junction points with western connections are Council Bluffs and Des Moines, Iowa, Twin Cities, and Crawford, Fremont, Lincoln, Norfolk, and Superior, Nebr., Oakes, N. Dak., and Orin, Wyo. North Western's principal gateways for interchange of transcontinental traffic are Chicago, Council Bluffs, Omaha, and Twin Cities.

As pointed out by the examiner, North Western historically has been a relatively short haul carrier, a large percentage of the short haul traffic on its lines being accounted for by the concentration of industries

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[23] Wisconsin 2,654 miles, Iowa 2,153 miles, Minnesota 1,541 miles, South Dakota 1,448 miles, Nebraska 1,153 miles, Illinois 923 miles, Michigan 467 miles, Wyoming 288 miles, and North Dakota 14 miles.

in central and northern Illinois, southern and eastern Wisconsin and eastern Iowa. Its average haul in 1961 was only 236 miles compared with 349 miles average haul for the Northern Lines. Its percentage of yard crew wages to road crew wages was 78.1 percent as against the Northern Lines' 57.3 percent. Short-haul traffic provides less revenues over which to spread terminal and similar costs. In addition, such traffic is more susceptible to diversion to motor carriers. Loss of local traffic by the North Western has increased its dependence on traffic originating or terminating on other lines. For example, from 1930 to 1955, the traffic local to North Western fell from 33.6 percent of the total to 19.5 percent. During the same period, overhead traffic increased from 8.1 percent to 18.7 percent of the total. The proposed unification would divert a substantial volume of the interchange traffic to which the fortunes of the North Western are tied.

The effect of drastic changes in traffic patterns has been to compel the North Western to generate traffic originated or terminated by other lines. In 1961, of all traffic handled by North Western 69.6 percent involved interchange traffic. A substantial portion of the North Western's traffic originated or terminated off-line moves transcontinentally by the Great Northern and Northern Pacific. For example, in 1961 the North Western handled more of the traffic interlined with the Northern Lines at Twin Cities than any other railroad, including Burlington which is controlled by the Northern Lines.

Applicants concede that North Western, as a result of traffic diversion created by the proposed merger, would lose $2,518,688 per year in gross revenue. The corresponding loss in net income would be $1,219,122. North Western estimated that it would lose $4,375,600 per year in traffic to the New Company, resulting in an annual loss in net income of $2,841,523. The examiner concluded that applicants' estimates of diversion are substantially correct.[24]

The estimates of traffic diversion submitted by applicants and by North Western are essentially judgment figures. We have reviewed the recommended report in light of North Western's exceptions to the examiner's findings on diversion and applicants' reply thereto. For the reasons hereinafter indicated, we believe that the amount of traffic that would be diverted from the North Western is considerably closer to its estimate than the estimate of applicants.

A high percentage of North Western traffic subject to diversion to the New Company is that which moves to and from Twin Cities and points west on one of the Northern Lines and which is presently handled by North Western between Chicago and Twin Cities. The examiner concluded that:

> It is undoubtedly clear that if the business was competitive with Burlington, but was not handled by Burlington, special circumstances probably controlled its routing and those circumstances would continue to control after unification. In the opinion of the hearing examiner, little, if any,

[24] The examiner's conclusions are explained at pages 302-310 of the recommended report.

> of such traffic would be lost to any of the named lines as a result of unification for the reason that Burlington has already obtained as much as is practicable. From a realistic standpoint, applicants' proposed terminal improvements in Twin Cities should assist all lines receiving and interlining traffic and may assist their competitive posture with other transport modes.

The foregoing statement has some validity but it attempts to prove far too much. In the first place, the Great Northern and the Northern Pacific, in the process of competing vigorously with each other, must frequently find a competitive advantage in using the North Western rather than the Burlington. But when all competition between the two Northern Lines is eliminated, it is unrealistic to believe that the North Western will continue to hold all such interline traffic not now handled by the Burlington. In addition, we believe that applicants and the examiner overlooked the tremendous solicitation advantages that would be enjoyed by the merged company. Scores of shipper witnesses testified concerning the advantages of single-line service and, in the light that testimony, it would be naive to think that North Western's competitive position on traffic moving through the Twin Cities gateway would not be adversely affected. And finally, applicants' opposition to conditions designed to improve North Western's interchange operations with the New Company at Minneapolis indicates that the amount of diversion would exceed their conservative estimates.

In estimating diversion of traffic from the North Western, the examiner failed to include traffic han-

dled at such major terminals as Twin Cities, and Head-of-the-Lakes by the Northern Lines in switching service only and carried beyond by the North Western. Today, the North Western handles a considerable volume of such traffic in competition with one or more of the major applicants. After merger, however, the originating carrier will be able to handle a considerable volume of traffic in line-haul movements which is handled today in switching service. The North Western estimates that it would lose $453,557 in revenue from this type of traffic.

For the reasons set forth above, we are persuaded that the North Western's loss of traffic to the New Company would be much closer to its estimate of $4,375,600 per year than to applicants' estimate of $2,518,688.

To offset the adverse impact of the merger, the North Western requested that the following conditions be composed:[25]

1. That the New Company be required to open the gateway at Crawford, Nebr.;
2. That the New Company be required to open the gateway at Oakes, N. Dak.;
3. That the New Company join with the North Western in the following operational arrangements—[26]

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[25] Clarification of Condition 1 of applicants' Standard Traffic Conditions, requested by North Western, would also affect Milwaukee.

[26] Three of the eight operating conditions originally proposed by North Western were denied by the examiner and no exceptions were taken to that action. Information concerning those three operating conditions may be found at pages 320 and 321 of the recommended report.

(a) New Company to deliver interchange traffic to the North Western at the latter's Lyndale and E. Minneapolis Yards, and accept interchange traffic from the North Western at the New Company's Lyndale and Union Yards;

(b) New Company to cancel North Western's contractual obligation respecting rental of tracks and facilities which would no longer be used by North Western following unification;

(c) New Company to sell or lease to North Western Great Northern's Union Yard trackage at Minneapolis;

(d) New Company to rescind contractual obligations requiring North Western to pay for use of Great Northern's Minneapolis passenger station and related facilities no longer used by North Western;

(e) Northern Lines to withdraw objection to direct interchange of traffic between North Western and Duluth, Winnepeg & Pacific Railway at Head-of-the-Lakes; and

4. That Condition 1 of the Standard Traffic Conditions offered by applicants be clarified.

The examiner recommended that the requested conditions designated above as Conditions 1, 3(a), and 3(b) be granted and that requested Condition 4 be denied. We have reviewed the exceptions and replies of the parties respecting these findings and conclusions of the examiner and we find the conclusions of the examiner to be correct in all material respects. Accordingly, no further discussion of the North Western's requested conditions identified above as Conditions 1, 3(a), 3(b), and 4 is necessary.

However, we do not agree with the examiner's recommended denial of conditions identified above as Conditions 2, 3(c), and 3(e). If such conditions were imposed, in addition to the others recommended by the examiner, it does not appear that the North Western would be opposed to the merger. Imposition of these requested conditions, other than Condition 3(d), would be essential, in our opinion, if the proposed merger were approved. Our reasons follow.

As indicated, the examiner denied the North Western's request for the establishment of a new gateway at Oakes, located in southwest North Dakota. Facilities at Oakes can accommodate a substantial increase in traffic without additional investment. Operations at Oakes are simple and conducted in an uncongested area, in contrast to the complex interchange, at the Twin Cities. Presently the average daily interchange between the North Western and Northern Pacific at Oakes in 6 cars. North Western's present service to and from Oakes is limited, since the volume of traffic in recent years has permitted North Western to operate trains only 3 days a week, except when livestock traffic justifies additional train service. The average consist of trains to Oakes is 3 loads and 11 empties pertrip. Similarly, the light traffic has not required more than minimum track maintenance. The grades and curves to and from Oakes are not excessive and North Western could handle a considerable increase in traffic over the line with its present facilities. Northern Pacific now provides 6-day a week service to and from Oakes, where it also connects with the Soo Line. Tariff provisions applicable to transcon-

tinental traffic interchanged with Great Northern and Northern Pacific restrict the use of routes via Oakes, with minor exceptions, to a small area adjacent to that gateway. The practical effect of those tariff provisions is the North Western receives a maximum haul of 404 miles between Twin Cities and Chicago, instead of a haul of 759 miles via Oakes.

North Western seeks opening of the Oakes gateway to the extent routing will be available to New Company through Twin Cities or through the Dakotas and Minnesota. North Western estimates that opening of both the Oakes and Crawford gateways would enable it to increase its revenues by $1,256,559 a year. The examiner recognized that the conditions he recommended, including opening of the Crawford gateway, would not make the North Western whole. The traffic which North Western seeks to interchange with the merged lines at Oakes can now be interchanged at Twin Cities or at the Missouri River crossing point of Sioux City, Iowa. After unification, North Western, under the standard routing conditions, could obtain that traffic for interchange at Twin Cities or Sioux City. The additional gateway at Oakes would enable it to obtain on a shipment, for example, from the Twin Cities, a route via Oakes, 355 miles west of Twin Cities.

The examiner concluded that opening of the Oakes gateway would provide no significant advantage to the shipping public or to the carriers involved. We do not agree. Obviously, the requested condition would benefit the North Western by enabling it to make more efficient use of its tracks in competing

with a much larger competitor. Imposition of the Oakes gateway condition would tend to neutralize the adverse impact of the merger on North Western.

In declining to recommend that the Oakes gateway be opened, the examiner gave little or no weight to the testimony of shippers that they would benefit. In recommending approval of the Crawford gateway condition but disapproval of similar condition for Oakes, the examiner apparently applied the criteria in section 15(3) of the act and found that North Western had failed to demonstrate a substantial shipper need. However, the applicable standard for determining whether routes should be opened as a condition to a merger is whether the condition is just and reasonable. *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, 295 (1932). In fact, the Commission has required gateways to be opened without citing shipper benefits and solely for the purpose of minimizing traffic diversion. *Seaboard Air Line R. Co. —Merger—Atlantic Coast Line*, 320 I.C.C. 122, 208 (1963).

One reason given by the examiner for not opening the Oakes gateway was that the requested condition would result in inefficient transportation service by the carriers involved. Mileages over an Oakes-North Western route between representative points would be longer in most instances than mileages via the shortest New Company route or via Minneapolis-North Western. The range of circuity, however, is almost *de minimis*. Whatever additional interchanges might result from opening the Oakes gateway would be more than offset by the simplicity of interchange

at Oakes as compared with the complexity of interchange operations at the Twin Cities.

Assuming, *arguendo*, that the merger is otherwise consistent with the public interest, we believe the examiner erred in rejecting North Western's proposed condition relative to the sale or lease of Great Northern's Union Yard trackage. The tracks in question are required by the North Western to reduce the time required to move cars through the Twin Cities in competition with the improved single-line service made possible by the merger. Applicants contended that consideration of operating conditions at Minneapolis was premature and that, at some appropriate time following consummation of the merger, they would work out improved interchange arrangements with the North Western. The examiner accepted this argument. However, if the competitive instincts of the two Northern Lines now preclude coordination and improvement of their own interchange operations and facilities at Minneapolis, assurances that the New Company would help a competitor are entitled to little weight.

Finally, and again assuming that the proposed merger should be approved, we believe the examiner erred in failing to recommend, as a condition to the merger, the withdrawal of the Northern Lines' objection to direct interchange between the North Western and the DW&P at Head-of-the-Lakes. If the North Western could make such interchange using Northern Pacific tracks, it would eliminate the time and expense involved in effecting such interchange via an intermediate carrier, Lake Superior Terminal &

Transfer Railway. LST&T is owned jointly by the Northern Lines, North Western, and the Soo Line. The requested condition would enable the North Western to compete on more equal terms with the New Company. Although LST&T is used today to interchange cars between Great Northern and Northern Pacific, the services of that intermediate carrier will not be used on the movements in question by the New Company.

Approval of the merger would combine the two strongest transcontinental railroads operating between the Twin Cities and the Pacific Northwest and the strongest midwestern carrier. The chief competitor of this giant combine would be the Milwaukee whose financial condition, even today, is anemic. Milwaukee and the New Company would serve 11 States in common: Idaho, Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington, and Wisconsin. It is far from certain that the Milwaukee, almost entirely encircled by the lines of the New Company, could survive absent special conditions to ameliorate the impact of the merger. It is inconceivable that the merger could be approved without reasonable assurance that the essential transportation services of the Milwaukee would be continued.

Comparison of Milwaukee's net income and total railway operating revenues with that of the major applicants shows for the years 1960, 1964, and 1965:

	Railway operating revenues	Net income
1960		
	Millions	*Millions*
Milwaukee	230.4	1.3
Burlington	251.1	12.1
Northern Pacific	174.9	18.5
Great Northern	246.0	20.7
1964		
Milwaukee	228.2	5.3
Burlington	267.4	20.4
Northern Pacific	184.3	23.5
Great Northern	250.4	28.9
1965		
Milwaukee	241.3	7.3
Burlington	270.4	16.7
Northern Pacific	197.9	28.0
Great Northern	265.9	36.9

The decline in the Milwaukee's share of traffic in the Pacific Northwest is reflected in a decrease in railway operating revenues, 1960 under 1951 of approximately $30 million compared to decreases of approximately $15 million for the Burlington, $2 million for the Great Northern, and an increase of $1 million for the Northern Pacific. When the earnings of the Milwaukee and applicant railroads, including other income, are carried through to net income, the Milwaukee's inability to keep pace is brought into sharp focus.

The three major applicants steadily improved their working capital position in the period 1951-60 except for the year of 1960. On the other hand, the working capital position of Milwaukee steadily declined. The trend in working capital is particularly significant in appraising the ability of the Milwaukee to continue providing efficient transportation service as a competitor of the New Company.

The net additions and betterments on the Milwaukee for the 1951-60 period have not been as great as those made by the Great Northern, Northern Pacific or Burlington, despite the fact that the miles of road owned and operated by Milwaukee exceeds substantially the miles owned and operated by any of the three major applicant railroads.

Burlington has not experienced a deficit nor missed a dividend in 35 years. Great Northern has had only 3 years (1932-34 inclusive) of deficit operations, and Northern Pacific only 2 (1932 and 1939) since 1926. While, beginning in 1942, applicants have been able to pay increasingly larger amounts in dividends, the Milwaukee has experienced deficit operations in every year but 2 from 1926 to and including 1940. During the was years, its net income was erratic. Since 1952, and until very recently, its net income has been declining. Milwaukee's dividends during the 5 years 1956-60 were lower than those during the preceding 5 years.

The examiner correctly found that "artificial and geographical handicaps limit Milwaukee's ability to participate in traffic to and from the growing Pacific Northwest. Milwaukee traffic volume on its lines west of Twin Cities and the Missouri River has failed to keep pace with that of its competitors * * *"

The lines of the Milwaukee total 10,596 miles in 13 Northwestern and Midwestern States.[27] The Milwau-

[27] Mileages in those States, where indicated by the record, are in parenthesis: Michigan (178), Indiana, Illinois, Wisconsin (1,520), Missouri, Iowa (1,781), Minnesota (1,329), Nebraska, North Dakota (366), South Dakota (1,738), Montana (1,251), Idaho, and Washington (1,063).

kee's main lines extend from Chicago west to Twin Cities, Sioux City, Omaha and Kansas City, serving a territory comparable to that served by Burlington, and from Chicago west via Sioux City, Twin Cities, Aberdeen, S. Dak., Miles City, Forsyth, Butte and Missoula, Mont., Plummer, Idaho, Spokane and Marengo, Wash., to north Pacific points, including Seattle, Tacoma, Everett, and Longview, Wash., serving a territory comparable to that served by the Northern Lines.

Milwaukee opposes the applications on the ground that the merger would seriously threaten its competitive position and even its survival. It contends that approval of the proposed unification would be adverse to the public interest unless the public is assured effective rail competition by the imposition of conditions adequate to enable Milwaukee to realize its full service potential.

The record clearly shows that the Milwaukee now provides an essential and efficient rail transportation service in the area where it is a principal competitor of the applicant railroads. Evidence to that effect was adduced by the testimony of 6 of Milwaukee's officials, 1 consultant, public witnesses called by it, at least 86 of the shipper witnesses called by applicants, 18 independent interveners representing various Federal and State agencies, and by a number of associations of shippers. We agree with the following summary of this evidence by the examiner:

> In spite of wide divergence of position expressed on the proposed unification, each of the intervening Federal and most State agencies, as

well as numerous important shippers, whose shipments approximate many thousands of carloads annually, called by both applicants and interveners, forcibly evidenced the vital importance of and dependence upon the Milwaukee both at points competitive with one or more applicant railroads, and at stations and areas noncompetitive with applicant railroads. They look to the Milwaukee for active, vigorous and healthy railroad competition both in rate negotiations and in quality of service to the shipping public.

As found by the examiner, freight traffic on Milwaukee's lines east of St. Paul and Sioux City compares favorably with density per mile of road on Burlington during the period 1956-60, but on its lines west of St. Paul and Sioux City, Milwaukee's density was only about half that of the Northern Lines and only about half of that of Milwaukee's lines east of those cities. In the six States in which Great Northern, Northern Pacific and Milwaukee each operate, Milwaukee in 1960 handled a smaller percentage of total ton miles for the State than its percentage of total miles of road in that State. On the other hand, applicants handled a greater percentage of ton miles than their percentage of total miles of road.

Since Milwaukee's lines do not reach Portland or Bieber, the Milwaukee has no direct connection with Southern Pacific or with Western Pacific. Since applicants and Union Pacific do not participate in through routes and joint rates with each other or with Milwaukee at junctions which provide them with less than a maximum haul, Milwaukee cannot par-

ticipate in alternate transcontinental through routes via junctions west of Twin Cities and the Missouri River gateways to and from all major west coast terminals. Nor can it participate in north-and-south traffic between major west coast cities.

Traffic originating at Milwaukee points east of Twin Cities or Sioux City or originated by its connections at points east of Chicago and Kansas City, and moving westbound to points in North Dakota, Montana and west served by the Northern Lines, routed for line-haul delivery over those lines, must be interchanged at Twin Cities or Sioux City regardless of whether such traffic could have been carried to a more westerly junction as efficiently by Milwaukee. The restrictive routing applies not only to such traffic going to Northern Pacific, Great Northern or SP&S points not served by Milwaukee, but to traffic in which they participate as line-haul carriers to destinations served directly by Milwaukee, such as Great Falls, Missoula, Spokane, Seattle, or Tacoma. It also applies where the Northern Lines, including SP&S, are overhead or intermediate carriers between Twin Cities and Portland, Bieber, or Sumas.

Such routing restrictions prevent Milwaukee from participating in westbound movements over its lines west of Twin Cities where there is a stop to part unload or complete load or a noncompetitive Great Northern or Northern Pacific point. Presently, Milwaukee, Northern Pacific, and Great Northern each can provide three stops on its single-line route between Twin Cities and its Pacific north coast terminals. However, each of the three northern routes now

has certain geographical advantages and disadvantages in providing a combination of stop points on a single railroad.

Although Milwaukee participates in westbound transcontinental routes with Northern Pacific and Great Northern to all points on their lines west of Twin Cities or Sioux City, and on their western connections, whether common with Milwaukee or not, from all points on Milwaukee and its eastern connections, enabling Great Northern and Northern Pacific to obtain their long haul from Twin Cities, the latter lines do not generally reciprocate with respect to eastbound traffic by routes via western junctions to points east of Twin Cities, and in no case to Chicago and points east and south thereof, affording Milwaukee a long haul over its western Lines. Thus, traffic cannot go off one line for transit or stop-off at a point on another line west of Twin Cities or Sioux City. Even at some points jointly served by Milwaukee and one or more of applicant lines, there may be no track connection or interchange for local switching service.

There are some exceptions to such general routing practices between Milwaukee and the Northern Lines. Eastbound lumber can move at joint through rates via junctions with Great Northern, Northern Pacific or SP&S west of Twin Cities but those routes are limited to traffic destined to points served directly by the lines of Milwaukee and not by lines of either of the Northern Lines, or by any other connection. Traffic routed via those western junctions cannot be reconsigned to points off the lines of Milwaukee, which limits their use to shipments for which no other route is available.

Because Milwaukee is unable to participate in transcontinental routes over its long haul route west of Twin Cities to and from Oregon and California on volume movements, it must hold traffic originating or terminating at points local to its lines, to its own long haul and does not participate in transcontinental routes via Portland, Bieber or other California gateways. It fears that to do so would drain much of the traffic from its lines without any reciprocal long haul routes. Other transcontinental lines terminating on the Pacific Coast have reciprocal routes which permit participation east and west in both long and short haul routes via western junctions.

Traffic to or from Milwaukee's points in Montana, Idaho, and Washington requires a two or three-line haul when coming from or going beyond Longview Junction or to Oregon or California. Traffic to and from British Columbia via Sumas generally requires a three-or four-line haul. Due to frequent interchanges with railroads north of Portland, service is often inadequate to attract traffic for movement over Milwaukee, except for traffic from points local to Milwaukee. Moreover, Milwaukee must obtain the concurrence of Great Northern, Northern Pacific or Union Pacific as an intermediate carrier to establish joint rates to or from all points served by Milwaukee west of Twin Cities on the one hand, and, on the other, Vancouver, Wash., Portland and points south, which handicaps Milwaukee in obtaining traffic to move over its lines.

The limitations on Milwaukee's routes west of Twin Cities and Sioux City, together with the fact that

Milwaukee is short hauled at the Twin Cities gateway on a large volume of traffic, has severely limited Milwaukee's traffic potential, and has impaired its competitive position in relation to applicant railroads. Consequently, Milwaukee's participation in substantial movements of transcontinental traffic over its lines west of Twin Cities is limited to that which moves to or from a point served directly by the lines of Milwaukee and to those movements within Mountain-Pacific territory to points beyond its lines, which originate or terminate at local points on its lines not served by applicant railroads. On the other hand, the ability to participate in traffic to and from Oregon and California has been an important factor in the ability of the Northern Lines to improve their relative participation in traffic over their lines west of Twin Cities. Numerous shippers have indicated that the rate and service limitations on Milwaukee routes have prevented them from making full use of the latter's service potential, to their detriment as well as the Milwaukee's.

Another factor which discourages the movement of traffic over Milwaukee's lines and the location of industry on its lines is the dual basis of switch charges. One type of switch charges is the nonabsorbed switch charge which is added to the line haul rate of the delivering carrier. The other type is the absorbed switch charge. For competitive reasons, nonabsorbed switch charges usually apply when the movement originates or terminates at a noncompetitive point not reached in line-haul by the switching carrier or its line-haul connections. When the line-haul movement is from

or to a competitive point served in line-haul by the switching carrier or its connections, the competing carrier must absorb the switching charge in order to be competitive. In the territory west of Twin Cities, the switching tariffs of all carriers provide that where the switch charge of the switching carrier is to be absorbed by another line-haul carrier, a substantially higher per hundredweight charge must be absorbed for exactly the same service as performed for the noncompetitive charge.

To minimize the adverse effect of the proposed merger on its operations, the Milwaukee proposed the following routing and traffic conditions in addition to the standard conditions offered by the applicants: [28]

1. That 11 gateways in the west,[29] presently closed to the Milwaukee, be opened;

2. That the New Company grant to Milwaukee, upon fair and reasonable terms, entry into Portland over their lines between Longview Junction, Wash. and Portland, with the right to serve all intermediate points;

3. That the New Company grant to the Milwaukee, upon fair and reasonable terms, trackage rights over certain of their lines to enable the Milwaukee to conduct efficient operations to and from the international gateway at Sumas, Wash.;

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[28] Although not formally offered as a condition, we would agree with Milwaukee that, if the merger were approved, applicants should be required to improve and expedite interchange of freight with Milwaukee at the Twin Cities.

[29] Fargo and Linton, N. Dak.; Miles City, Judith Gap, Great Falls, Lombard, Butte, and Missoula, Mont.; and Spokane, Seattle, and Tacoma, Wash.

4. That Billings, Mont., be treated as a station on the Milwaukee;

5. That the New Company join with the Milwaukee in abolishing the dual system of switching charges at all terminals where now in effect; and

6. That the New Company join with the Milwaukee in re-establishing rate relationships via all routes with the Milwaukee, when by reason of the merger, the relationships of such rates with rates via other routes of the merged lines are disturbed.

The examiner recommended that conditions 2, 3, and 5 be imposed, but that the Milwaukee's request for conditions 4 and 6 be denied. We have considered the exceptions and replies of the applicants and of the Milwaukee relating to the examiner's recommendations on conditions 2 through 6. We find that exceptions in question are lacking in merit; that the findings and conclusions of the examiner are proper and correct in all material respects, except to the extent that traffic diversion and other losses of the Milwaukee attributable to the proposed merger were underestimated; and that said findings and conclusions should be, and they are hereby, affirmed and adopted as our own, assuming *arguendo*, that the proposed merger should be approved.

With respect to the Milwaukee's losses of traffic resulting from the proposed merger, the examiner found:

> In summary, the evidence shows that of the four categories of presently enjoyed traffic, after adjustment for switching, claims, corrections, et

cetera, based on 1960 movement of traffic, from which Milwaukee anticipates diversion and concomitant adverse effect as a result of the proposed unification, it would suffer loss of revenues in only three; interline traffic $1,487,482, lumber and plywood traffic $741,195, and a substantial portion of Montana grain traffic $1,549,176, or a total of $3,777,853.

An additional loss that would be proximately caused by the merger was summarized by the examiner in these words:

> In addition, to meet the faster proposed schedules of the merged company, Milwaukee asserts that it would be necessary for it to reduce the number of cars and tons handled in its present single daily scheduled transcontinental train to the extent that a second train daily in each direction would have to be operated between Twin Cities and Seattle, which, on 1961 data, after allowance for such extra trains as were operated, would have resulted in 857,678 additional train miles, and added cost of $3,010,450. That figure when combined with the figure representing loss of traffic to be competitive aggregates $6,788,-303. Applicants do not challenge Milwaukee's estimate, but offered without supporting evidence a weak and unconvincing surmise that Milwaukee could meet the New Company's faster schedules without running a second train in each direction on each operating district daily.

Both the applicants and Milwaukee disagree with the examiner's conclusion. Applicants assert that the examiner overstated the traffic diversion losses of the Milwaukee, improperly included the anticipated extra

expense to the Milwaukee of operating a second transcontinental train, and understated the increased revenues that would be derived by Milwaukee from special conditions recommended by the examiner.

We agree with applicants that the added costs, estimated to be $3,010,450, of the Milwaukee's second train to the Pacific Coast cannot be regarded as a loss attributable to the merger. Although the Milwaukee argued that the faster service offered by the merged company would require it to speed up its own schedules, there is some indication in the record that motor carrier competition over newly completed portions of the Interstate Highway System would have required faster schedules. In addition, as Justice states in its exceptions, the Milwaukee provided faster and additional transcontinental train service following the close of the hearings to match improvement in transcontinental service contemplated by the Great Northern and the Northern Pacific. The Milwaukee contends, however, that the merged company will further shorten its schedules by eliminating interchange delays, while the Milwaukee can make no further improvements. In our opinion, further improvements in transcontinental freight service are speculative, are not directly related to the proposed merger, and should not be considered in estimating the financial impact of the merger on the Milwaukee.

In addition, the examiner found that the Milwaukee would suffer traffic diversion losses of $3,777,853, a sum disputed by both the applicants and the Milwaukee. Applicants contend that most shippers, particularly "national accounts," tend to divide their

traffic among competing railroads. Thus, they assert that a plant located on both the Northern Lines and the Milwaukee would give half of its available traffic, after merger, to the New Company and half to the Milwaukee, rather than the one-third to each of the Northern Lines and the Milwaukee. Applicants further contend that Milwaukee would benefit from the competition between the Northern Lines and certain of their connecting carriers which would be created by merging the Burlington into the New Company. Applicants estimate the net loss to the Milwaukee resulting from traffic diverson to be $363,482 annually. In excepting to the examiner's evaluation of these losses, applicants state that the losses claimed in each of three traffic categories discussed by the examiner—grain shipments from Montana, eastbound shipments of lumber and plywood, and long-haul shipments handled interline by both the Milwaukee and applicants—are overstated.

In estimating traffic diversion, we are dealing with so many imponderables that the amount of diversion can never be calculated with mathematical precision. We are required, of course, to evaluate the conflicting estimates of the applicants and the Milwaukee to the best of our ability.

In brief, it is applicant's position that the examiner failed to accord proper weight to the testimony of several grain shippers and other expert witnesses who stated that only minimum diversion of Montana grain shipments would take place; that he failed to recognize that nothing in the proposed merger would affect the routing or shipper preferences for transportation

of plywood and lumber; and that too little weight was accorded to the Wyer study on diversion of interline traffic, which was not rebutted. Milwaukee, on the other hand, excepts to the examiner's failure to recognize as divertible, all of the Montana grain traffic and an anticipated $1,368,846 loss in forwarder traffic.

Upon reviewing these exceptions, we find that the examiner's findings, except as hereafter noted, are not unreasonable in light of the record, taking into account the essentially speculative nature of the subject matter. His estimates on the diversion of grain lumber, and plywood traffic are quite generous in view of the fact that the demand for transportation of these commodities frequently exceeds the supply of freight cars.

Nevertheless, we recognize that the New Company, operating on both sides of the Milwaukee, will be able to divert a substantial amount of the latter's traffic due to the availability of alternate routes without rate or gateway restrictions, increased numbers of stop-off and transiting points, and elimination of combination Great Northern-Northern Pacific rates. Consideration must also be given to losses of traffic in areas other than those specifically identified in the record, for example, possible diversion of grain traffic from areas other than Montana.

In our opinion, the amount of forwarder traffic claimed as divertible by the Milwaukee should have been allowed by the examiner. Although noting that the unified company would benefit forwarders through wider routing privileges, combining of stops on less

circuitous routes, and elimination of various delays, all of which "will no doubt drain a substantial volume of that traffic from the Milwaukee," the examiner rejected the estimated revenue loss of $1,368,846, stating that these improvements, while beneficial to forwarders, would not shift the Milwaukee's forwarder traffic to the merged lines. We do not agree. The business of a forwarder is to assemble carload shipments and move them expeditiously. The New Company would be able to provide a superior service over a wide area which the Milwaukee would be unable to match, particularly in the important matter of stop-off privileges. Contrary to the implication in the recommended report, forwarders are not tied to any particular railroad. They relocate if carrier delays or other operating problems hamper their operations. In conclusion, we find that the Milwaukee would lose as a direct result of the merger, $1,368,846 in forwarder traffic plus the $3,777,853 estimated by the examiner.

Applicants contend, however, that imposition of the three special conditions recommended by the examiner would unjustly enrich the Milwaukee since it would thereby gain $11,622,206 annually in revenue. Applicants also estimate that Milwaukee's condition 1 for the opening of eleven new gateways would enrich the Milwaukee at their expense in the amount of $8,342,-390 a year. Although applicant's estimates are somewhat inflated, we recognize that imposition of the conditions requested by the examiner and Milwaukee condition 1 would make the Milwaukee a stronger carrier after merger than it is today. However, the

Commission's powers under section 5(2) of the act are not limited to insulating competing carriers from the adverse consequences of a proposed merger. In the interest of creating more balanced competition, the Commission may improve the position of carriers affected by a proposed merger.

The record in these proceedings is replete with concern for the maintenance of vigorous intramodal competition among rail carriers serving the Pacific Northwest and the Northern tier of States east of Washington. The Milwaukee's lines were built at a cost in excess of $240 million between 1905 and 1909, primarily to provide effective competition for the Northern Lines. The Milwaukee does not have sufficient traffic to justify this large investment. That condition was a strong factor in driving the Milwaukee into receivership in 1925. See *Chicago, M & St. P. Ry. Co. Investigation*, 131 I.C.C. 615 and *Chicago, M. & St. P. Reorganization*, 131 I.C.C. 673. It is obvious that, with only one regular transcontinental train in service in addition to the extra train recently added, the Milwaukee has enormous excess capacity. If conditions to the merger were framed solely with a view toward making the Milwaukee whole, the area most vitally affected by the proposed merger would have no reasonable assurance of even a modest degree of rail competition.

Viewing Milwaukee's condition 1 in the light of the impact of the proposed merger on the Milwaukee, the value of intramodal competition, and the benefits that the condition would bestow upon the shipping community, we are unable to agree with the examiner's

rejection of that condition. If the merger were consistent with the public interest, we believe that imposition of the condition would be necessary and proper.

As previously indicated, Milwaukee's condition 1 seeks the opening of gateways at eleven western junctions. At the present time, shipments originated by either of the Northern Lines at points on their respective lines west of Twin Cities, receive a long haul over their lines to the Twin Cities and are there interchanged with a connecting line designated by the shipper. Milwaukee seeks to require the New Company to join with it in establishing new gateways so that Milwaukee could move shipments originating on the New Company's lines west of the eleven gateways over Milwaukee's lines either as a bridge or terminating carrier. Similarly, the New Company would be able to short haul Milwaukee by taking a shipment, originating on Milwaukee west thereof, at the gateway, either as a bridge or terminating carrier. The short haul proposal would apply both eastbound and westbound. In other words, the condition contemplates that a shipper could route traffic at joint through rates with interchange between the Milwaukee and the New Company at Twin Cities or Sioux City, or at any one of the eleven North Dakota, Montana or Washington gateways.

Milwaukee does not propose that there be more than one alternate western junction on the same movement. Thus, it would permit Milwaukee to solicit for its longest practical haul over its lines west of Twin Cities or Sioux City traffic which must now be sur-

rendered or received at those points. Correspondingly, New Company would have the same opportunity. The condition would also permit shippers to select alternate routes, according to their needs, over the lines of the Milwaukee and the New Company. In addition, shippers and receivers using Milwaukee would gain the advantage of diversion and recosignment, stop-off and transit privileges available to shippers and receivers using the New Company. The examiner found that at each of the points proposed as an open gateway, there are adequate facilities for the interchange of traffic.

Imposition of Milwaukee condition 1 was favored by 38 shippers or receivers of various types of freight and also by the Department of Agriculture. The Department stressed the importance of maximum fluidity and flexibility in the transportation of agricultural commodities. If unification is approved, Agriculture urges that additional gateways, including those requested by Milwaukee, be opened, and that through routes and joint rates be established between applicants and competing railroads to afford shippers access to all markets and sources of supply.

The examiner's rejection of the 11-gateway condition was based primarily on an unsound legal theory and to a lesser extent on his failure to give sufficient weight to supporting shipper testimony. His basic error was discussed in connection with the denial of the Oakes gateway condition requested by North Western.[30] The examiner's error is revealed in the

[30] See page 38, *supra*.

following statements on page 273 of the recommended report:

> The Commission has defined, and uniformly followed certain principles in evaluating similar [shipper] testimony in routing cases brought under sections 15(3) and 15(4) of the act, and since the various sections of the act must be applied in harmony with one another, these principles are relevant.
>
> The term "public interest" as used in section 15(3) requires more than a showing of the desire of shippers for additional routes; it requires instead a real, specified and substantial need. Proof justifying the establishment of a through route on one commodity may not justify the establishment of through routes on other commodities via the same gateway. Cf. *Denver & R.G.W. R. Co.* v. *Union Pacific R. Co.*, 287 I.C.C. 611. The opening of a route via a particular junction for movements to or from one area does not open the junction for movements between other areas. Cf. *Thompson* v. *United States*, 343 U.S. 549. General statements in support of routes sought do not afford a sufficient basis for a finding that the present routes are inadequate or that the public interest requires the establishment of the routes sought. Cf. *American National Livestock Association* v. *Atchison T. & S. F. Ry. Co.*, 298 I.C.C. 245, 249.

The standard of section 15(3) of the act—"a real, specified and substantial need"—is not applicable in determining whether routes should be opened as a condition to approval of a merger. The Supreme Court so held in *Atlantic Coast Line R. Co.* v. *United States, supra.* In a section 5 proceeding, the stand-

ard is whether suggested conditions are "just and reasonable." In such a proceeding, the protection of a carrier's long-haul must be far less important than the need to minimize traffic diversion and to insure vigorous competition with a merged company. Such needs are especially strong in the case of the Milwaukee and, as we have indicated, its 11-gateway condition has substantial shipper support.

Finally, we do not share the examiner's concern that the "gateways sought by Milwaukee would place the latter in a position to short-haul the New Company on substantial transcontinental traffic, [and] place New Company in the unviable position of having to maintain adequate plant facilities and equipment not only to serve its traditional long-haul routes but to originate or terminate traffic via the many short-haul routes created if the gateways requested are established." In the first place, the gateways condition would be reciprocal. Thus, New Company could short-haul Milwaukee. And secondly, the solicitation efforts of the Milwaukee would be puny in comparison with those of the New Company.

We have appraised the conditions requested by the North Western and the Milwaukee merely to place a merger of the major applicants in its most favorable posture. Viewing the merger with the conditions that appear to us to be sound, we must determine whether the benefits to be derived by applicants and the shipping public from such a merger are outweighed by the disadvantages of such a merger to a portion of the shipping public and railroad employees, and in terms of lessened competition. Before making this

ultimate evaluation, however, consideration must be given to the monetary savings that applicants would realize from consummation of the merger and to the competitive aspects of the merger, assuming that it would be conditioned as indicated above.

Estimate of Savings to be Derived By Applicants From the Proposed Merger, Appropriately Conditioned

On December 1, 1957, the original report of Wyer, Dick & Co., titled "Report on Economics of Proposed Consolidation," was completed and delivered to the Northern Lines. This report indicated that annual increased net income to be realized from consolidation might run as high as $46,479,246, less a 12½ percent allowance for contingencies. After submission of the Wyer report, merger negotiations between Great Northern and Northern Pacific continued.

In 1960, following agreement of the two Northern lines that unification should be accomplished, but before final action was taken by the respective boards of directors, changes had occurred in cost levels, operating conditions and physical facilities which had existed during the 1955-56 period on which the original operating study was made by Wyer, Dick & Co. In July 1960, the firm was requested to review its studies and update its report to reflect not only changes in cost levels since the original report, but also changes in operating conditions and physical facilities which had occurred in the interim. The original studies were reviewed and revised to reflect current conditions to the extent necessary and rates and costs were adjusted to the levels of July 1, 1960. Additional studies were

made concerning the potential savings from consolidation of certain passenger trains between Chicago and St. Paul, and potential savings in Federal income taxes on the Burlington dividends.

The supplemental report of the consultants was submitted to the presidents of the two Northern Lines on November 8, 1960. The combined original and supplemental reports of the consultants, including numerous maps, embraced twenty studies, which are analyzed and described at pages 97-144 of the examiner's report. The following table is the examiner's recapitulation of the twenty studies which, as hereinafter modified, we find to be a reasonable estimate of savings attributable to the proposed merger:

	Study	Estimated savings	Net cash realized (cash required)
I	Common points	$15,846,802	($26,206,751)
II	Duplicate lines	----------	----------
III	Lines retained-effect of consolidation expenses	1,940,899	(2,434,078)
IV	Duplicated freight train service	1,697,725	----------
V	Duplicate passenger train service St. Paul-Chicago	490,856	----------
VI	Car load freight-shortest or most economical point routes	3,630,910	----------
VII	Car load freight-longer hauls	10,561,178	----------
VIII	Less car load freight-loading patterns	432,836	----------
IX	Equipment pools	3,208,130	7,106,176
X	General repair facilities	2,194,535	1,043,187
XI	Materials & supplies stocks and purchases & stores organization	1,336,319	4,667,173
XII	Foreign line freight charges on company material	167,321	----------
XIII	Communication facilities	560,114	(423,720)
XIV	Train dispatchers	330,809	----------
XV	Special agents	124,463	----------
XVI	Dining car departments	80,136	94,492
XVII	System revenues	(1,958,705)	----------
XVIII	System Expenses	10,586,135	----------
XIX	Labor contracts	(885,360)	(2,765,805)
XX	Taxes	(4,639,766)	----------
	Total savings	45,605 337	
	Less: 12 1/2 percent allowance for contingencies	5,700,667	----------
	Estimated Savings before income taxes	39,904,670	----------
	Total Net cash represented as realizable for consolidation-(cash required)	----------	(18,922,325)

The Department of Justice contends that many economies claimed for the proposed merger are possible without merger. For obvious reasons, the Department was not able to identify specific projects which applicants could undertake without merger. We recognize that applicants cannot achieve by voluntary coordination savings that approach those which could be achieved by merger. However, even if the applicants continued to compete, it would be feasible for them to coordinate certain facilities and to realize therefrom substantial savings. Today, applicants operate joint passenger facilities at six common points. Both freight and passenger stations and forces are operated jointly at Portland-Vancouver and Sidney, Mont. In light of these successful operations and the potential savings involved, it seems likely that the program of voluntary coordination could be extended to such common points as the Twin Cities, Spokane and Seattle, where separate freight facilities are now operated.

We do not agree that coordination of yards would be impracticable merely because the Great Northern and Northern Pacific are directly competitive. Coordinations of this type could benefit both carriers by permitting faster handling of through traffic and reducing operating expenses. On the other hand, we realize that coordination of routes of competitors is ordinarily impracticable. As to other forms of cooperation, however, the close relationship of the applicants indicates that a portion of the savings estimated to be derived from merger can be achieved without merger.

The Wyer report discloses that the proposed operating changes in Study I, relating to common points now

served by two or more of the applicants, would produce the largest savings, totaling $15,846,802. Of the 39 common points at which such savings are anticipated, 85 percent would be derived from consolidation of facilities at Twin Cities, Duluth-Superior, Portland-Vaucouver, Seattle and Spokane.

While the precise amount of savings that might be achieved from coordination of facilities cannot be determined from the record, we believe that not less than one-third, or approximately $5,282,267, of the estimated savings totaling $15,846,802 could be realized without merger. The one-third reduction is purely a judgment figure, but we are satisfied that it is conservative. With this adjustment, the savings to be derived from the proposed merger would be estimated as follows:

Total estimated savings (as estimated by the examiner and adjusted herein)	$34,410,741
Less: reduction attributable to common points	5,282,267
	$29,128,474
Less: 12 1/2 percent for contingencies	3,641,059
Estimated savings as further adjusted	$25,487,415

Applicants estimated that $43,224,540 total annual savings, after allowance of 12½ percent for contingencies, would be realized by the 10th year after consolidation. On the same basis the examiner, after certain adjustments, concluded that $39,904,670 is a conservative estimate. However, the examiner failed to recognize in his recapitulation of estimated savings the effect of the Southern Pacific stipulation. In addition, his computation is based on a smaller amount

of traffic diversion from the Milwaukee and the North Western. And finally, the examiner's computation does not reflect revenues that applicants would lose as a result of the imposition of conditions which we have found to be appropriate but which he did not recommend. We have made no other changes in the examiner's recapitulation of estimated savings set forth in the above table.

The table below sets forth in greater detail our adjustments in the examiner's computation of estimated savings:

	Examiner's report	Adjustment	Total
Estimated savings before allowance for contingencies	$45,605,337	----------	$45,605,337
Less: studies VII and XVIII (net)	8,602,473	----------	8,602,473
Estimated savings in expenses	37,002,864	----------	37,002,864
I. Revenue susceptible to diversion to applicants			
Estimated net gain in revenue (studies VII and XVII)	8,602,473	----------	8,602,473
Southern Pacific stipulation	504,260	----------	504,260
Revenue gain interline from CMSP&P.	3,777,853	$1,368,846	5,146,699
Revenue gain from C&NW	2,841,523	1,534,077	4,375,600
Estimated revenue gains	15,726,109	2,902,923	18,629,032
II. Applicants' revenues susceptible to diversion to other carriers			
C&NW (gateway condition only)	900,000	356,559	1,256,559
CMSP&P (conditions 2, 3 and 5)	11,622,206	----------	11,622,206
Condition 1	----------	8,342,390	8,342,390
Estimated revenue losses	12,522,206	8,698,949	21,221,155
Net revenue gain or loss	3,203,903	(5,796,026)	(2,592,123)
Total savings	40,206,767	----------	34,410,741
Less: Reduction of one-third attributable to common points	----------	----------	5,282,267
Total savings as adjusted	----------	----------	29,128,474
Less: 12 1/2 percent for contingencies	5,025,846	----------	3,641,059
Estimated savings before income taxes	35,180,921	----------	25,487,415

0 denotes loss.

COMPETITIVE ASPECTS OF THE PROPOSED UNIFICATION

The most significant issue in these proceedings is the effect of the proposed merger on the competitive balance of transportation service and facilities in the territory served by the Northern Lines. Nearly all of the parties opposing the merger stress the importance of retaining the vigorous competition that now exists between the Northern Lines. Opponents of the merger contend that it will create a rail transportation monopoly within the States of Minnesota, North Dakota, Montana, and Washington, and will result in serious harm to the shipping public. While the applicants do not deny that some loss of competition would occur, they assert that unification will not substantially lessen competition or trend to create a monopoly of transportation services. Applicants contend that the proposed merger will promote competition by enabling the New Company to compete more effectively with other forms of transportation. Applicants also state that, with few exceptions, all points now served by more than one railroad will continue to be served by more than one railroad after merger.

The question of competition and competitive relationships among the applicants themselves and with other carriers, and the changes in these relationships which would come about if the merger were consummated, have been extensively argued by all parties to these proceedings. We shall consider the question in the light of the applicable legal standards, intermodal competition, and intramodal competition.

APPLICABLE STANDARDS

Under section 5(2) of the act, the Commission is authorized to approve proposed mergers which are found to be consistent with the public interest. In empowering the Commission to authorize mergers Congress "did not import the general policies of the antitrust laws as a measure" of the permissibility of such an authorization, *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 85. It was recognized, however, that because competition among carriers is a significant factor in the attainment of the objectives of the national transportation policy,

> * * * the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operations, lower costs, et cetera, to determine whether the consolidation will assist in effectuating the overall transportation policy. *McLean, supra*, 87

Since the *McLean* case requires an appraisal of adverse competitive effects following the merger, Justice and other opponents of the merger assert that it is appropriate, if not necessary, to determine the areas of effective competition through an analysis of the relevant geographic and product markets, as those terms are used in antitrust cases. *Cf. Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962). The Supreme Court in *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154, in reversing *Florida East Coast Ry. Co.* v. *United States*, 242 F. Supp. 14 (M.D. Fla. 1965),

clearly held that the Commission need not determine whether the proposed merger, absent Commission approval, would violate section 7 of the Clayton Act, and that in appraising the competitive effects of a proposed rail merger the Commission need not apply yardsticks developed for the purposes of the antitrust laws. The market criteria of *Brown Shoe* can be applied here, if at all, only with great caution and substantial qualification. Clearly, the Supreme Court's decision does not preclude us from measuring the competitive consequences of a proposed rail merger by transportation standards which may or may not overlap the market criteria employed in antitrust cases.

In our discussion of competition at various places in this report,[31] we wish to emphasize that we have not appraised the proposed merger by the standards of the antitrust laws. Whether the proposed merger, but for the provisions of section 5(11) of the Interstate Commerce Act, would violate the antitrust laws is a question upon which we make no finding and express no opinion.

In *Seaboard Air Line Railroad Co., supra,* the Commission evaluated the competitive effects of the merger, but did not find whether the merger, absent the immunity accorded by section 5(11), would violate the antitrust laws. As indicated, we make no such finding here. On appeal, a three-judge district court held that "the Commission is required to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger." *Florida East*

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[31] See pages 67-84, 90-92, and 96-98, infra.

Coast Ry. Co. v. *United States*, 242 F. Supp. 14, 20 (M.D. Fla. (1965)). In vacating the judgment of the district court, the Supreme Court held that the Commission was not required to determine whether the merger might otherwise violate the antitrust laws. *Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154 (1965). Specifically, the Court held that the three-judge district court erred in its interpretation of the directions of the Supreme Court in the *McLean* case and in *Minneapolis & St. Louis R. Co.* v. *United States*, 361 U.S. 173 (1959), and particularly in failing to interpret properly the following directive at page 186 of the *Minneapolis* case:

> Although § 5(11) does not authorize the Commission to 'ignore' the antitrust laws, *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80, there can be 'little doubt that the Commission is not to measure proposals for [acquisitions] by the standards of the antitrust laws'. 321 U.S., at 85-86.

The Interstate Commerce Act and other legislation dealing specifically with transportation problems constitute the immediate frame of reference within which this Commission operates and the policies expressed therein must be the basic determinants of our action. *McLean* case, *supra*, at pages 79-80. Under those policies, carrier participants in appropriate mergers are relieved from the requirements of the antitrust laws. *ibid.*, page 85.

But in executing those policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. As the Supreme Court explained in the *McLean* case this "* * * poses a problem of accommodation of the Transportation Act and antitrust legislation * * *" In explaining what was meant by "accommodation" the court noted that the Transportation Act is later in time and constitutes not only a more recent but a more specific expression of policy. As to competition it has said in the *Minneapolis* case, *supra*, at page 187:

> Against this background, no other inference is possible but that, as a factor in determining the propriety of [railroad acquisitions] the preservation of competition among carriers, although still of value, is significant chiefly as it aids in the attainment of the objectives of the national transportation policy. 321 U.S. at 85-86.

In this proceeding we have made the prescribed accommodation, neither ignoring the antitrust laws nor using their standards to measure the proposed consolidation.

The Total Transportation Market-Intermodal Competition

Applicants emphasize that competition from other modes of transportation has made serious inroads on their traffic and earnings. They contend, in effect,

that intermodal competition is so strong and pervasive that any lessening of rail competition cannot be regarded as a serious obstacle to merger. Although applicants are highly prosperous by railroad standards, they profess to be pessimistic regarding their ability, individually, to cope with the progressively stronger competition provided by other modes.

Of course, the rapid growth of highway, barge, and pipeline carriers has affected the traffic and revenues of the applicants. Through unification, applicants hope to recapture a large volume of traffic that has been lost to other modes of transportation, including private and exempt for-hire carriers. The rapid growth of motor, water, and pipeline carriers, and the intensification of intermodal competition are matters of common knowledge. As the rail monopoly on surface transportation was broken by newer forms of transportation, it would naturally follow that the rail carriers' share of total intercity freight traffic would decline. However, the intermodal competition faced by applicants is not as strong as that which exists in other parts of the country.[32]

Although the railroads' share of the transportation market fell from 45 percent in 1959 to 43.02 percent in 1963,[33] long-term trends are favorable. For rail

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[32] *Cf. Southern Pacific Co.—Control—Western Pac. R. Co.*, 327 I.C.C. 387 (1965).

[33] Data for 1963 are taken from the Commission's *78th Annual Report to the Congress* (1964), pages 34-35.

carriers generally ton-miles have shown an absolute increase. During the period 1960-1964, the ton-miles transported by the major applicants in this proceeding increased substantially. The major applicants have made a successful transition from the role of a jack-of-all-trades to the performance of transportation services better reflecting their inherent advantages.

In general, the examiner agreed with applicants' thesis that their decline and fall can be arrested only by merger. For example, the examiner found at page 55 of his recommended report: "Within the last decade the financial condition of the applicant railroads has shown a steady deterioration." The examiner attributed this condition to intermodal competition[34] and concluded at page 404 of his report that "unless they [applicants] are allowed to stabilize their position through unification, there is every reason to believe the declining trend will continue." A "continuing threat" to applicants' ability to survive was found by the examiner to be the impact of intermodal competition on manufactures and miscellaneous traffic.[35] As shown by the table set forth at page 15, *supra*, this gloomy prediction of the applicants and the examiner was soon contradicted by the actual movement of traffic in the manufactures and miscellaneous category.

Applicants also contend that intermodal competition

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[34] Recommended Report, page 425.

[35] Recommended Report, pages 41-46.

has placed a ceiling on many rates and compelled reduction of many others, with the result that their net railway operating income has declined far more sharply than their volume of traffic. This contention, which was accepted by the examiner, is illustrated by the following table appearing on page 196 of the recommended report:

	Net railway operating income	Percent of change	Carloads	Percent of change
		Burlington		
1947	$31,780,908		1,552,552	
1960	16,632,498	-47.67	1,313,353	-15.41
		Great Northern		
1947	23,815,730		1,214,805	
1960	18,435,448	-22.59	1,043,269	-14.12
		Northern Pacific		
1947	18,005,493		820,054	
1960	10,115,540	-43.82	651,429	-20.57

The table above is apparently intended to show some correlation between applicants' traffic volume and revenues, and the growth of intermodal competition. The attempted correlation is specious because changes due to long-term shifts in traffic from the railroads to other modes of transportation were not distinguished from those attributable to cyclical changes in the economy. It is well known that the railroad industry is highly susceptible to fluctuations in the general level of economic activity.

The table below is based on applicants' annual reports for the years 1960 through 1965. It shows a mixed trend rather than one of continuing decline.

	Net railway operating income	Percent of change	Carloads	Percent of change
		Burlington		
1960	$16,632,498		1,313,382	
1961	18,918,081	13.74	1,312,590	-0.06
1962	24,339,952	28.66	1,369,875	4.36
1963	25,080,623	3.04	1,369,589	-0.02
1964	24,000,218	-4.31	1,410,667	3.00
1965	20,423,802	-17.51	1,368,631	-3.07
		Great Northern		
1960	18,435,448		1,043,269	
1961	16,762,401	-29.62	971,107	-6.92
1962	23,173,124	38.24	961,225	-1.02
1963	26,998,371	16.51	962,507	0.13
1964	25,466,676	-9.38	988,477	2.70
1965	33,040,261	22.92	992,233	.38
		Northern Pacific		
1960	10,115,540		651,429	
1961	8,585,776	-15.12	622,414	-4.45
1962	13,820,180	60.97	626,290	0.62
1963	14,154,478	2.42	655,538	4.67
1964	12,879,463	-9.01	695,928	6.16
1965	18,153,299	29.05	698,330	.34

Although the data shown in the above table tends to follow national economic trends, the effect of intermodal competition and the extent of applicants' successful retaliation are not separable from general economic effects. Although such a correlation is possible, that made by the applicants is not reliable.

Although applicants have lost a significant amount of traffic in recent years to other modes of transportation, much of that traffic can never be recaptured. We believe that diversionary losses to intermodal competition have been more than offset by increases in traffic resulting from exploitation of the rails' inherent advantage in high-volume, long-haul movements. And, as previously stated, the intermodal competition faced by applicants is not as strong as that which exists in other parts of the country. The extremely long-hauls of the applicants greatly reduce effective motor car-

rier competition. The examiner recognized that the long-haul, lower-rated production of the west, principally agricultural, forest and mineral products, is "generally not attractive to motor carriers" and "is entirely dependent upon rail transportation." [36] However, he failed to consider that applicants also enjoy a similar advantage on interterritorial movements of manufactured articles. The only inland waterway of any consequence in the territory served by the Northern Lines is the Columbia River. Tonnage moving on the Columbia is extremely small in relation to that moved over the inland waterways in other parts of the country.

To counteract diversion of traffic by other modes, applicants have improved their services and have made many rate innovations and adjustments. It is abundantly clear that applicants have been successful in preventing avoidable diversion of traffic and in diverting from other modes traffic that is better adapted to transportation by rail.

The record, therefore, does not establish that intermodal competition poses such a threat to the future successful operations of applicants that the only means of preserving the advantages of rail transportation in the area is to permit the merger here proposed. However, for the reasons hereinafter indicated, we believe that the market for rail transportation and intramodal competition are also relevant in weighing the public interest aspects of this proceeding.

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[36] Recommended Report, page 43.

INTRAMODAL COMPETITION

Although the applicants have lost some traffic to other modes, a substantial amount of their present traffic is either substantially noncompetitive or falls in a competitive "twilight" zone and is thus available to that mode best able to exploit its inherent advantages of cost and service. In the former category are heavy loading, low-value bulk commodities and unfinished commodities in which traffic the applicants predominate. The most conspicuous example of the latter is traffic moving in increasing quantities under various piggyback (trailer-on-flatcar) plans. Regardless of the type of traffic involved, applicants have a decided competitive advantage in many long-haul movements. In this case, rail transportation must be considered a distinctive market in its own right. Cf. *Interstate Commerce Commission* v. *New York, N.H. & H. R. Co.*, 372 U.S. 744 (1963); *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83, 91 (1957); *Eastern-Central Motor Carriers Ass'n* v. *United States*, 321 U.S. 194 (1944); *Santa Fe Trail Stages, Inc., Common Carrier Application*, 21 M.C.C. 725 (1940). See also Meyer, Peck, Stenanson, and Zwick, *The Economics of Competition in the Transportation Industries*, (1960) pages 240-41 and Conant, *Railroad Mergers and Abandonments*, (1964) pages 25-41.

As noted by the examiner, the physical lines of the major applicants limited to some extent the amount of competition between them. For example, although the lines of the Great Northern and the Northern Pacific

meet at a number of common points, portions of their main lines are many miles apart. To support their contention that the competitive impact of the proposed merger would be negligible, applicants adduced evidence showing traffic flow patterns for 1960. Using a proposed unified system station inventory as a base, this evidence shows traffic data for the total system, for each railroad, each station classification by commodity group classification, States served, carloadings, revenues, and shipping classification. A total of 4,479 stations on applicants' lines were broken down into the following four classes:

Class 1—stations commonly served by two of the applicant carriers and no other rail carrier	141
Class 2—stations commonly served by two of the applicant lines and at least one nonapplicant carrier	236
Class 3—stations served by one applicant line only	3,397
Class 4—stations served by one applicant line and one or more other rail lines	705
Total —All 4 classes	4,479

As indicated above, applicants' tabulation purports to show that only the 141 class 1 stations[37] would be materially affected by a lessening of rail competition since, after merger, the New Company would provide service in lieu of competitive service now provided by applicants. Competition would also be reduced at 236 class 2 stations, but these stations would continue to be served by at least one other railroad.

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[37] Included among these stations are Grand Forks, N. Dak., Billings, Laurel, and Helena, Mont., and St. Cloud, Moorhead, Fergus Falls, and Anoka, Minn.

Applicants stressed the fact that at 4,102 stations, or 91.58 percent of the total, there would be no change in the number of railroads serving a particular point after unification. Rail service at those stations is now provided solely by one of the applicants (3,397 stations—class 3) or by two or more railroads including only one of the applicants (705—class 4) which in 1960 originated or terminated 74.91 percent of the total carloadings and accounted for 68.59 percent of the total system revenues. The examiner agreed with applicants that the proposed consolidation would not result in any significant lessening of competition. In reaching that conclusion, the examiner declined to treat the Northern tier of States separately for the following reason: [38]

> Again, the fact of the matter is simply that Burlington is decidedly an integral and important part of the proposed unification, and there is no real justification for excluding Burlington from consideration as to the competitive effect.

The Department of Justice contends that the examiner erred in limiting his appraisal of competitive effects to the area in which all applicants operate, since the Burlington's lines are complementary to rather than competitive with those of the Northern lines.

We do not agree with the examiner's conclusion. Of course, the Burlington is an integral and vital part of the proposed transactions. However, inclusion of the Burlington in the merged company does not substan-

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[38] Recommended Report, page 394.

tially lessen competition. The rail competition which would be destroyed is largely that which now exists between the Great Northern and the Northern Pacific. In other words, the most relevant and significant area of rail competition in this proceeding extends from the Twin Cities and the Great Lakes across the Northern tier of States to the Pacific coast because this is the area where vigorous intramodal competition exists and is threatened. In this area, the lines of the Great Northern and Northern Pacific run generally parallel and serve in common five major terminals: Head-of-the-Lakes, Twin Cities, Spokane, Seattle, and Portland. These five terminals include 35 stations on the Great Northern and 60 stations on the Northern Pacific. Including the SP&S, the breakdown of class 1 and class 2 stations by States is as follows:

	Class 1	Class 2
Minnesota	51	43
North Dakota	20	4
Montana	34	2
Washington	36	111
	141	160

Without some indication of the amount of traffic generated at stations within the Northern tier of States, the mere recitation of the number of common points at which competition will either be reduced (class 2) or eliminated entirely (class 1) by the unification, does not indicate whether the effect of the proposed merger on competition would be substantial or insignificant. Since both the applicants and those opposing the transactions have relied upon aggregate data in estimating the degree to which competition would be curtailed, the record contains only a limited

amount of evidence as to the distribution of traffic among the four classes of stations. However, such evidence is the best available and, despite certain infirmities therein,[39] is adequate in making a realistic appraisal of the competitive effect of the proposed merger.

The following tabulation reflects the revenue contribution of classes 1 and 2 stations in the Northern tier States of Washington, Montana, North Dakota and Minnesota in relation to classes 3 and 4 stations:

Class 1	*Northern Lines (including SP&S)*
Stations	4.25
Cars	6.60
Tons	5.60
Revenues	6.16

Class 2	*Northern Lines (including SP&S)*
Stations	7.47
Cars	32.67
Tons	27.81
Revenues	37.71

Total classes 1 & 2	*Northern Lines (including SP&S)*
Stations	11.72
Cars	39.27
Tons	33.41
Revenue	43.87

[39] For example, tonnage moving between stations on one line is credited to each station. Also, bridge traffic is excluded since it does not terminate at any station on line. However, the percentages of tonnage and revenue totals at the various classes of stations are revealing even though the totals do not exactly correspond to actual tonnage and revenues.

Total classes 3 & 4	*Northern Lines (including SPGS)*
Stations	88.28
Cars	60.73
Tons	66.59
Revenue	56.13

Thus, the Northern lines are competitive at points accounting for approximately 43 percent of their gross revenues and 34 percent of their total tonnage. However, these common point statistics do not show competition for overhead traffic which accounts for at least 12 percent of the revenues of the Northern Lines. The competitive impact of this transaction may be measured also by market shares of traffic within the area involved and by the distinctive traffic flows which are competitive, given common points, routes and other competitive factors. See generally Massel, *Competition and Monopoly*, pages 194-244. The Northern Lines are each other's principal competitor for long-haul freight traffic between the Pacific Northwest and the Twin Cities, embracing the Northern tier States and the State of Oregon. Within this area, competitive rail service is also provided by the Union Pacific via Omaha, Nebraska and Salt Lake City, Utah to Portland and the Milwaukee via Twin Cities to Seattle. The record reveals that, as to east-west traffic to and from the Pacific Northwest moving through four representative gateways: Troy, Mont. (Great Northern); Paradise, Mont. (northern Pacific); Avery, Idaho (Milwaukee), and Huntington, Oreg. (Union Pacific) for the years 1957-60, the following market shares exist among the four carriers:

	1957	1958	1959	1964
Northern Pacific:				
Total cars[1]	185,646	184,394	197,792	193,883
Percent of total	28.2	28.9	29.7	30.9
Great Northern:				
Total cars[1]	206,348	197,156	199,528	188,325
Percent of total	30.9	30.9	30.0	30.1
Milwaukee:				
Total cars[1]	79,645	75,519	84,151	75,948
Percent of total	11.9	11.8	12.7	12.1
Union Pacific:				
Total cars[1]	194,242	181,414	183,569	168,453
Percent of total	29.0	28.4	27.6	26.9
All roads:				
Total cars	668,881	638,483	665,040	626,609
Percent	100.0	100.0	100.0	100.0

[1]Total cars, East and Westbound.

Since competition from Canadian transcontinental lines or the circuitous routes of the Southern Pacific would be generally ineffective, the above table clearly shows that the New Company would reign supreme over this important transportation market.

Further evidence of such dominance is shown by the number of miles of line operated and the ton-miles produced within Northern tier States by applicants, excluding Burlington, and the Milwaukee and Union Pacific.

	Miles of track operated[1]	Percent of total[1]
Minnesota:		
Applicants	3,201	38.96
Milwaukee	1,330	15.98
North Dakota:		
Applicants	3,508	67.45
Milwaukee	367	7.06
Montana:		
Applicants	3,415	67.63
Union Pacific	143	----------
Milwaukee	1,251	24.77
Idaho:		
Applicants	491	12.70
Union Pacific	233	3.64
Milwaukee	233	8.20
Oregon:		
Applicants	735	15.83
Union Pacific	1,119	35.34
Milwaukee	0	0
Washington:		
Applicants	3,696	63.74
Union Pacific	1,022	17.62
Milwaukee	1,063	18.33

[1]Percentages do not add to 100 due to exclusion of other carriers.

Ton-mile figures for the same area in 1960 show that applicants moved 44.83, 81.15, 82.60, 77.41, 20.55, and 23.22 percent of the total ton-miles for the States of Minnesota, North Dakota, Montana, Washington, Idaho, and Oregon, respectively.

As to the north-south traffic, there are two major competitive routes, the Shasta route controlled by the Southern Pacific and the Bieber or inland route controlled jointly by the Great Northern, Western Pacific and Santa Fe to provide competitive service with Southern Pacific-Northern Pacific and Union Pacific-Southern Pacific routes via Portland. Based on 1960 data, applicants together accounted for 73.5 percent of the traffic moving through these gateways.

After merger, the New Company would be the dominant transportation enterprise operating between the Northwest and Twin Cities. The Milwaukee would be relatively weaker than it is today and the Union Pacific, although directly competitive, would be handicapped by its circuitous routes. The available data indicates that the New Company would handle roughly 61 percent of the carload traffic moving westbound and 83 percent moving eastbound from the Northwest. It would move about 67 percent of the total ton-miles in the four Northern tier States of Minnesota, North Dakota, Montana and Washington.

Numerous shippers and representatives of cities and States served by applicants appeared in these proceedings. Most of them supported the proposed merger, but a large number of the shippers testified that rail competition is important to them, particularly in the matter of rates and service.

Although regulation imposes certain constraints upon intramodal rail competition, competitive ratemaking is far from dormant. Subject to the requirements of the Act, there is a broad zone of reasonableness within which the discretion of carrier management and the interplay of competitive forces operate. A number of the shippers in the applicants' territory testified that active and vigorous competition among applicants and other railroads had brought about a lower level of rates. These witnesses included representatives of such large firms as General Electric, Rayonier, Incc., A. O. Smith Co., and Zenith Radio Corporation. Other shippers emphasized the importance of rail competition in providing cars, particularly wide door boxcars, during periods of car shortages, improved service in the setting out and delivering of cars tto sidings, and the settling of loss and damage claims.

In sum, it is clear that the shipping public derives substantial benefits from existing competition between applicants themselves and between applicants and other railroads. Some shippers supporting applicants expressed a preference for the preservation of rail competition iif feasible, a finding we have made elsewhere in thiss report.[40]

In appraissing the present scope of intramodal competition in the territory served by applicants, we have taken a number of variables into account. Since there are no exact yardsticks for measuring the competitive

[40] See page 97 infra.

impact of a merger, it is necessary to rely to considerable extent on such imperfect indicators of competition as appear in the record and which appear reasonable in the light of our general knowledge of transportation conditions.

To the extent permitted by this record, we have attempted to measure the competitive impact of the proposed merger in terms of the most relevant area and the principal types of commodities transported. Although the proposed merger embraces points within 13 States, we have found the most relevant competitive area to be the area in which the Northern lines aggressively compete with each other. The Burlington has been included in our appraisal of competitive effects in the 13-State area, but excluded from our appraisal of competitive effects in the Northern tier of States, since its lines are, for the most part, complementary to those of the competing and parallel lines of the Great Northern and Northern Pacific. Taking these two lines alone, we have found the geographic area of effective competition to be the Northern tier States of Minnesota, North Dakota, Montana, and Washington. Where sufficient data is available, we have also included the States of Oregon and Idaho.

Based on information for the Northern tier of States, it is apparent that applicants, after merger, will overshadow all their rail competitors within this region and from this region to points beyond. Considering the effect on individual points first, the record indicates that competition will be eliminated or substantially reduced at 301 stations within the four-

State area, 141 of which will have no other service except that provided by applicants. These 301 stations, in 1960, accounted for 43 percent of the Northern lines' gross revenues and 34 percent of their total tonnage, although the number of these stations is only 12 percent of the total number of stations. However, the anticompetitive consequences of the merger would not be confined to stations where applicants are directly competitive. Today, rate innovations and service improvements by one of the Northern lines create strong pressure from the shippers for similar treatment by the other. These indirect benefits of competition between the Northern lines cannot be measured statistically but they are real.

Although applicants do not agree that the territory served principally by the Northern lines is the most relevant area of competition, they assert that, even in this area, the amount of competition that would be eliminated is not substantial. Applicants' argument, reduced to its essentials, is that since the non-competitive points are already a large percentage of the total, a small increase in the number of such points will cause no measurable harm. We do not agree that the amount of competition that would be foreclosed is small.

Discussion and Conclusions

This is the fourth merger attempt of the Northern Lines within the past 7 decades. In each effort, elimination of rail competition has been the primary objective and the paramount issue. For 70 years the courts

and the Commission have recognized that the Great Northern and Northern Pacific are each other's chief competitors, both in the area directly served by these carriers and for important transcontinental traffic.

The first attempt by the Great Northern to control the Northern Pacific ran afoul of a Minnesota statute prohibiting the consolidation of parallel and competing lines. In striking down that merger in *Pearsall* v. *Great Northern Ry. Co.*, 161 U.S. 646, 677 (1896), the Supreme Court said:

> The consolidation of these two great corporations will unavoidably result in giving to the defendant a monopoly of all traffic in the northern half of the State of Minnesota, as well as all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota legislature of 1874 and 1881 undoubtedly reflected the general sentiment of the public, that their best security is in competition.

To circumvent the decision in the *Pearsall* case, control of the Great Northern and Northern Pacific was then vested in a holding company. This arrangement was held by the Supreme Court to be a combination to restrain competition in violation of the Sherman Act. *Northern Securities Co.* v. *United States*, 193 U.S. 197 (1904). Once again the Supreme Court noted that the Northern Lines were vigorous competitors and that their competitive arena was the northern tier of States between the Great Lakes and the Pacific, including Oregon. The court also observed at pages 327-8 of its opinion:

> If such combination be not destroyed, all the advantages that would naturally come to the public under the operation of the general laws of competition, as between the Great Northern and Northern Pacific Railway companies, will be lost, and the entire commerce of the immense territory in the northern part of the United States between the Great Lakes and the Pacific at Puget Sound will be at the mercy of a single holding corporation, organized in a State distant from the people of that territory.

In all their various efforts to consolidate, the Northern Lines have contended that continuation of competition between them would be calamitous. The response of the Supreme Court in the *Northern Securities* case to such gloomy predictions was as follows:

> It is the history of monopolies in this country and in England that predictions of ruin are habitually made by them when it is attempted, by legislation, to restrain their operations and to protect the public against their exactions. (193 U.S. at 351).

The third attempt to unify the Northern Lines was initiated by applications filed with the Commission in 1927. Prior to its decision on these applications, the Commission, on December 9, 1929, adopted a plan for the consolidation of the Nation's railroads into a limited number of systems, as required by the Transportation Act of 1920. *Consolidation of Railroads*, 159 I.C.C. 522. The Northern Lines, together with the SP&S, were placed in System No. 12, while the Burlington, jointly owned by the Northern Lines, was placed in System No. 14. In conformity with the na-

tional consolidation plan, merger of the Northern Lines was approved February 11, 1930, subject to a condition that they divest themselves of control of the Burlington. *Great Northern Pac. Ry. Co. Acquisition*, 162 I.C.C. 37 (hereinafter called the *Acquisition* case). Primarily because of the condition requiring divorcement of the Burlington, the merger was not consummated.

The Commission's decision in the *Acquisition* case is not a precedent for finding that a consolidation of the Northern Lines would be consistent with the public interest. In 1930, the Commission was required by the Transportation Act of 1920 to develop, and to act in accordance with, a master plan for the consolidation of railroads into a limited number of systems. Today, however, we are not authorized to review merger proposals in accordance with any preconceived plan to encourage consolidation of the Nation's railroads. The practical difference between the Transportation Acts of 1920 and 1940 is illustrated in the concurring opinion of Commissioner Lewis in the *Acquisition* case, *supra*, page 71. He voted to approve the merger of the Northern Lines in accordance with the Commission's master plan, although he preferred to maintain them as competitors in joint control of the Burlington.

Although approving the merger of the Northern Lines subject to divestiture of the Burlington, the Commission recognized at page 56 of its report in the *Acquisition* case that "each of the northern roads is the most active competitor of the other, a condition

which will be totally removed by the unification * * *" Chairman McManamy stated in his dissent in *Acquisition* case, *supra*, page 76, a statement in which Commissioner Eastman concurred, that:

> It is clearly shown that these two railroads serve the same Pacific ports and the same lake ports and other eastern terminals and together serve all of the intervening territory. If active and substantial competition does not exist between these two lines, nowhere in the country can such competition be found. Officials of these two lines testified that not only are they in active and vigorous competition with each other but that each is the most aggressive and important competitor of the other.

In the Transportation Act of 1940, the Congress relieved the Commission of its responsibility to shape railroad mergers in accordance with a preconceived Commission plan of consolidation. Section 5(2)(b) of the act authorizes the Commission to approve unifications which it finds to be "consistent with the public interest" and also to attach such terms and conditions as it finds to be "just and reasonable." In determining whether proposed transactions are consistent with the public interest, the Commission is required by section 5(2)(c) of the act to consider the following four factors, among others:

> (1) The effect of the proposed transaction upon adequate transportation service to the public;
>
> (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in

the territory involved in the proposed transaction;

(3) the total fixed charges resulting from the proposed transaction; and

(4) the interest of the carrier employees affected.

In this proceeding, we are not concerned with the second and third criteria. No railroad in the territory involved has asked to be included in the proposed merger. If the merger were approved with appropriate conditions, it would not imperil the survival of any railroad operating in the involved territory. Total fixed charges resulting from approval of the merger would pose no problem for the New Company.

Although the merger would result in a net loss of 5,200 jobs on applicant railroads alone, the adverse effect on individuals would not be limited to those who lost their jobs as a result of the proposed merger. As pointed out by the examiner at page 406 of the recommended report, "the number of employees affected would exceed the number of jobs abolished, because of the so-called 'bumping' process under which, through exercise of seniority rights established by collective bargaining agreements, an employee whose position is abolished may displace another, who in turn, displaces an employee junior on the seniority roster, and so forth * * *" We also agree with the examiner's further observation that "those affected through the 'bumping' process would not reach the astronomical proportions envisioned by RLEA representatives."

We are required by section 5(2)(c) of the act to weigh the interests of affected employees on the scale

of the public interest. It is difficult, of course, to devise a common scale for weighing human suffering and monetary benefits to corporations. Here, the hardship that would be inflicted upon carrier employees is substantial but not so great, in our opinion, that, standing alone, this factor would require denial of the applications if the advantages of the proposed merger outweighs its attendant disadvantages beyond any reasonable doubt.

Accordingly, our primary concern is the probable effect of the proposed transaction upon adequate transportation service to the public. More specifically, we must decide whether the disadvantages of a substantial lessening of competition, coupled with the adverse effect on carrier employees, outweigh the advantages that would be derived by applicants and by the shipping public. Before analyzing and balancing these decisive factors, some preliminary observations must be made.

First, the Commission is required to approach every transaction proposed under section 5(2) with an attitude of strict neutrality. Applicants are not required to prove that the unifications they propose would promote or advance the public interest. A showing of compatibility with the public interest is sufficient. *Chesapeake & O. Ry Co.—Control—Baltimore & O. R. Co.*, 317 I.C.C. 261, 285 (1962). However, pursuant to section 7(c) of the Administrative Procedure Act,[41] applicants have the overall burden of establish-

[41] 5 U.S.C. sec. 1006(c).

ing that their proposal meets this statutory standard. On the other hand, the filing of an application under section 5 creates no presumption that the proposed transaction is consistent with the public interest. The examiner reached a contrary conclusion, as indicated by the following statement on page 422 of his report:

> The legislative history of section 5(2) and its enactment in its present form indicates clearly that its purpose is to foster and encourage voluntary proposals of carriers in the nature of mergers, consolidations and unifications in the national transportation system.

The legislative history of section 5 clearly shows that the Congress did not adopt a policy fostering or encouraging railroad unifications. It was the Transportation Act of 1920, not the Transportation Act of 1940, that embodied a policy favoring railroad consolidations. That policy was expressed in the following language amending section 5 of the Interstate Commerce Act:

> (4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems.[42]

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[42] 41 Stat. 456, 481. In *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298, 315 (1954), the Supreme Court observed: "Hence, for the first time [in 1919, preliminary to passage of the Transportation Act of 1920], government encouragement of railroad consolidation was discussed."

The policy adopted by the Congress in 1920 failed because of the means employed to effectuate it. The examiner's belief that the Transportation Act of 1940 continued the policy of favoring railroad mergers is an error which permeates the recommended report and which may have prompted charges that he was predisposed to grant the applications.

No such policy is expressed in section 5. To interpret section 5 as implying such a policy is a perversion of legislative history and intent. The public interest scale is balanced. It is not to be tipped by the slightest presumption for or against merger.

The second general observation we wish to make is that the financial strength of the applicants is not a bar to merger. Cf. *Norfolk & Western Ry. Co. and New York, C. & St. L. Ry. Co.—Merger*, 324 I.C.C. 1 (1964). Section 5(2) of the act is not limited to transactions involving a union of the weak and the weak, the strong and the weak or the large and the small. On the other hand, the prosperous condition of the major applicants is a highly material fact. Where carriers are so impoverished that they are unable, individually, to constantly improve their transportation services and facilities, the public interest involved in a pooling of their resources is obviously stronger than in a case where, as here, the applicants are financially able to improve their plants and facilities in step with advances in rail technology.

Our third general observation concerns the interaction of section 5 of the Interstate Commerce Act and

the antitrust laws and policies of the United States. Even though a proposed rail merger would result in a substantial lessening of competition throughout a large territory, the Commission can approve such a merger on the basis of countervailing public interest considerations. Mergers consummated under the Commission's authority are expressly immunized by section 5(11) from the operation of the antitrust laws. The Commission, however, is obliged to consider the anti-competitive consequences of a proposed merger with a view toward accommodating the public policy expressed in section 5 and the public policy embodied in the antitrust laws. The nature of the required accommodation is explained in *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79-80 (1944), where the court said:

> To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus, there, the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation fa-

cilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action.

But in executing those policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. When this is true, it cannot, without more, ignore the latter. The precise adjustments which it must make, however, will vary from instance to instance depending on the extent to which Congress indicates a desire to have those policies leavened or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarily and directly concerned.

In making the necessary accommodation, the Commission is not required to employ market analysis techniques such as those described in *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962); nor is the Commission required to determine whether, but for the presence of section 5(11), the proposed merger would violate the antitrust laws of the United States. These questions were recently settled in *Seaboard Airline R. Co.* v. *United States*, 382 U.S. 154 (1965), affirming the *McLean* case and extending its rationale to mergers alleged to be inconsistent with the policy of section 7 of the Clayton Act.

In short, the Commission is obliged to consider whether and to what extent a proposed merger may lessen competition and, if it finds that a substantial

lessening of competition would result, to weigh that unfavorable aspect of merger along with all other indicia of the public interest, pro as well as con. However, the Commission is not permitted to depreciate the values of competition which are reflected in the financial health of the merger applicants and in adequate transportation service to the public. And finally, although the Commission is concerned with the quantum of competition that would exist following approval of a merger, a more significant question is the amount of competition that would be destroyed by the merger. As Chairman McManamy said in his dissenting opinion in the *Acquisition* case, *supra*, pages 76-7:

> The fact that a substantial part of the traffic of each line is noncompetitive is immaterial. It is not with such traffic that the provisions of the statute deal. Nor may we limit our consideration of the traffic to that which in the language of the majority as 'exclusively competitive.' No such limitation is contained in the law. We must consider all traffic for which these lines compete and as to which their competition will be eliminated.

In the light of the general propositions stated above, we will now proceed to compare the benefits that would result from the proposed merger with its attendant disadvantages.

With regard to the nonmonetary benefits, it is clear that many shippers would receive better transportation service. Practically all of the significant improvements, however, would result from expanded routing

with more advantagous transit and diversion privileges. The increased number of routes would result from unified operation of applicants' lines and from imposition of the gateway conditions sought by the North Western and Milwaukee.

In our opinion, the proposed merger would not materially improve tracing of cars in view of the computer centers now being developed by progressive carriers. Although merger might improve freight car utilization and to that extent alleviate the car shortage problem, that benefit is counteracted by the loss of competition which now spurs applicants to meet the demands of the shippers at common points. Faster service is theoretically possible under the proposed plan of unification but, as previously pointed out,[43] competition has already produced faster transcontinental freight train schedules than the schedules originally proposed by applicants. Certain other alleged shipper benefits, such as processing of claims and reduction of damages due to less handling, are too insignificant to tip the scales for or against merger.

We recognize, however, that the shippers would derive some indirect benefit from savings realized by applicants as a result of merger. For example, to the extent that consolidation and modernization of terminal facilities can be accomplished only through merger, the shippers would benefit from the reduction in interchange delays. Thus, in the following discussion of monetary benefits reasonably attributable to the

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[43] See page 20-1, *supra*.

proposed merger, it should be understood that applicants are not the sole beneficiaries.

As adjusted by us,[44] applicants would realize the following savings from the proposed merger which could not otherwise be achieved:

Estimated savings as adjusted by the examiner		$45,605,337
Add: estimated revenue gains excluding studies VII and XVII (net)	$10,026,559	
Less: cost of North Western and Milwaukee protective conditions	21,221,155	(11,194,596)
Total savings		34,410,741
Less: one-third of alleged savings at common points	5,282,267	
Contingency factor of 12½ percent	3,641,059	8,923,326
Total		25,487,415

( ) denotes loss

We made two major adjustments in applicants' figures but accepted applicants' estimates in all other respects. First, we adjusted applicants' estimates to reflect the cost to them of conditions that are required for the protection of the Milwaukee and the North Western. Our estimates as to the cost of these conditions are somewhat lower than those of the applicants.

Our other major adjustment was to reduce by one-third savings attributable to coordination and consolidation of facilities at common points. In our opinion, this reduction was conservative and proper. We recognize that vigorous competition between the Northern Lines makes it impossible, as a practical matter,

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[44] For a breakdown of these projected savings, see page 504, *supra*.

to incur the expense involved in effecting coordinations that are physically feasible but from which they would derive grossly unequal benefits. Since merger would produce optimum savings from coordination of operations at common points, such improvements will not be made so long as applicants harbor hopes of merger. Once it is made clear that their unification is not consistent with the public interest, it is reasonable to assume that a number of voluntary coordinations will be effected. For example, it is inconceivable that applicants would not seek to realize, even without merger, savings of $1,871,026 a year from consolidation of yard facilities at the Twin Cities. In denying the applications of Southern Pacific and Santa Fe to control Western Pacific, we pointed out that certain savings alleged to result from control, could be achieved through voluntary coordination. *Southern Pacific Co.—Control—Western Pacific Co.*, 327 I.C.C. 387, (1965).

Thus, the proposed merger, conditioned to protect the North Western and the Milwaukee, may result in annual savings in the amount of $25,487,415, which could not otherwise be achieved. Although Milwaukee would be a stronger carrier in the area extending from the Twin Cities and Head-of-the-Lakes to the Pacific Northwest, there would be one very large and strong railroad and one relatively weak carrier, whereas there are today two strong rail carriers and one relatively weak carrier.

A substantial amount of competition would be destroyed by the proposed merger. The examiner's con-

trary conclusion was based on his failure to treat the territory served by the Northern Lines as the most relevant competitive area.[45] The examiner limited his appraisal to the much broader territory served by the Northern Lines and the Burlington, although the lines of the latter are complementary to and not directly competitive with those of its parents. In addition, the examiner failed to recognize that in the long-haul movement of agricultural, mineral, and forest products, motor and water carriers are not substantial competitors. Essentially, we must decide whether competition between the Northern Lines is worth between $12.7 and $25.5 million a year to them and to their shippers.

Obviously, no dollar figure can be placed upon the value of competition. We do know that the Northern Lines, including the SP&S, interchange over 70 percent of the north-south traffic at Portland and Bieber; that the Northern Lines, in 1960, carried 77, 82, 81, and 44 percent of the total rail ton-miles in the States of Washington, Montana, North Dakota, and Minnesota, respectively;[46] that the proposed merger would eliminate competition between the Northern Lines at approximately 300 common points which provide traffic accounting for 43 percent of their revenues; and that rail competition with the New Company would be

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[45] See pages 512-13, *supra.*

[46] By contrast, the Milwaukee carried only 12 percent of the ton-miles in Washington, 16 percent in Montana, 4 percent in North Dakota, and 12 percent in Minnesota.

minimal in the vast territory extending from the Great Lakes and the Twin Cities across 1,700 miles of intervening territory to the Pacific Coast.

Furthermore, the record clearly shows that shippers have benefited from vigorous competition between the Northern Lines. This competition has been reflected in rate reductions, in steady improvement in service, and in the location of industries at common points. The extent to which the Northern Lines themselves have benefited from competition cannot be measured statistically. Their continued growth and prosperity certainly prove that they have not been injured by each other's competition.

To find that competition between the Northern Lines is not worth between $12.7 and $25.5 million a year, less expenditures to achieve those savings, would be tantamount to a conclusion that the value of intramodal rail competition is negligible. This range of estimated savings is less than 2.6 to 5.3 percent of the combined operating revenues of the Northern Lines (including SP&S) for the year 1964. Moreover, applicants are not short of capital. In fact, in recent years they have paid increasingly large dividends.

The probable savings and benefits that would result from merger are more tangible than those derived from competition between the Northern Lines, but we are convinced that they are not as great. We conclude, therefore, that the disadvantages of an appropriately conditioned merger—a drastic lessening of competition and adverse effects on carrier employees —outweigh the benefits that might be derived by ap-

plicants and the shipping public. Applicants have failed to show that their proposed merger would result in transportation service to the public that is superior to that which can be provided without merger, or that the benefits reasonably attributable to the proposed merger outweigh the adverse effects of the merger on carrier employees and the benefits that shippers derive from the competition to be eliminated. Accordingly, we find that approval of the proposed transactions would not be consistent with the public interest.

An appropriate order will be entered.

COMMISSIONER FREAS, whom COMMISSIONER TUGGLE, MURPHY, WALRATH and GOFF join, dissenting:

The national transportation policy embraces the promotion of "sound economic conditions in transportation and among the several carriers." That great economies would flow from applicants' proposal is, in my opinion, clearly established. Surely the economies to be effected are not only consistent with the public interest as required by section 5(2)(b) of the act—they are in the public interest.

A suitably conditioned grant would not lessen rail competition materially and would substantially enhance competition among modes. As is conceded by the majority, the users of the service overwhelmingly support the proposal. These are the people for whom transportation is provided and whose needs it must serve. Their position is in no way counterbalanced by the testimony and arguments of affected governmental agencies—Federal, State or local. Measured by the

earning standard of rail lines generally, applicants are not now in dire circumstances. But I do not subscribe to the view that they should sit idly by, complacently watching the eroding of their position, until opportunity for self-help has passed them by.

It is not necessary here to detail the many shortcomings in the report of the majority. A number of them are discussed in the accompanying separate expressions. Repetition would serve no useful purpose.

I am strongly of the view that, with appropriate conditions, the merger should be approved.

COMMISSIONER TUGGLE, whom COMMISSIONERS FREAS, MURPHY, WALRATH, and GOFF join, dissenting:

The majority has caused the Commission in this case to abdicate its duty under the national transportation policy and the carrier-consolidation provisions of the Interstate Commerce Act. On that, I give this separate expression, not for any lack of harmony with the dissents of Commissioners Freas, Walrath and Goff, but rather to emphasize the Commission's excursion here into a transportation netherland.

The majority's points of departure are two: (1) it misapplied the law and (2) it fumbled the facts. The law (Section 5(2) declares that a rail merger shall be lawful, if consistent with the public interest. This is no ordinary statement of law; by reference to what preceded it in the law, it constitutes a drastic and dramatic change in public policy. From the first days of carrier regulation, the law favored, fostered and facilitated competition.

Competition was to be the device for promoting the development of a transportation system honed to peak efficiency by economic combat, providing ever-available, high-quality service at the lowest cost consistent with efficiency. The heat of competition was fired up by public policy, but the heat merely brought prostration to the transportation industry.

At that point, Congress reversed its field. By the Transportation Act of 1920, with subsequent modifications from time to time, it prescribed as a remedy what had theretofore been proscribed as a poison, viz., carrier consolidation. Competition, enthroned on irrefragable presumption, was deposed. Though not anathematized (as consolidation had been), it retains significance chiefly as an aid in attaining the objectives of the national transportation policy. *McLean Trucking Co.* v. *United States*, 324 U.S. 67, 85-86 (1944). In other words, regulation was to be based on facts, causes and effects, and not merely on a preconceived notion that the presence of competition alone will make all things right.

After concluding that competition had failed and would not suffice for bringing into being and maintaining the kind of transportation system it considered necessary, Congress introduced its new policy in the transportation legislation of 1920, and has continuously pursued it since, without retreat. Under that policy, the Commission is admonished to place no reliance upon a presumption that merely because competition exists, transportation will be proficient and consistent with the public interest. Indulging in such

a presumption would be, in effect, a reversion to the pre-1920 policy which Congress abandoned as seriously inadequate.

Yet the determinative element in the majority's decision today is the preservation of competition for the sake of competition, without inquiry into actual effects upon transportation. With the chaff blown away, that decision apparently turns on the finding that the present competition between the two Northern Lines is worth more than the $12.7 to $25.5 million per year in savings said to be attainable from the merger. Thus the Nation's antitrust policy is given full force and effect, notwithstanding that it is, in some respects, the antithesis of the transportation policy. Apparently of little weight are the numerous factors with which the transportation policy is concerned: economical and efficient operation; better, faster service at lower cost; greater and more variegated car and equipment supplies; more dependable schedules; expanded transit and diversion privileges; easier; faster tracing and location of shipments and equipment; effective centralized control and management; less damage and faster claim service; reduced delay in switching, yarding and interchanges; and attractive enterprise for continued investment and reinvestment.

The majority acknowledge that the Transportation Act of 1920 embodied a policy favoring carrier consolidations; but they view the act of 1940 as changing that policy. They suggest that consolidations are less favored under the latter legislation. The fact is, as

noted by the Supreme Court in *County of Marin* v. *United States*, 356 U.S. 412, 417-418 (1957), that—

> * * * the result of the [1940] Act was a change in the *means*, while the *end* remained the same. The very language of the amended "unification section" expresses clearly the desire of the Congress that the industry proceed toward an integrated national system * * *

Plainly and simply, the act of 1940 was intended to eliminate certain obstacles to carrier consolidations, i.e., "to facilitate merger and consolidation in the national transportation system." *County of Marin*, *supra*, at page 416. The Supreme Court has gone to great lengths to make this clear. See, e.g., *Schwabacher* v. *United States*, 334 U.S. 182, 191-193 (1947), and *Maintenance Employees* v. *United States*, 366 U.S. 169, 173 (1961). It is an exercise in futility for this administrative agency to attribute new meaning to a law when the highest court has repeatedly and consistently construed it otherwise.

Prior to 1940, a proposed consolidation had to comply with a government-masterplan and promote the public interest. As a result of the act of 1940, a proposal need not conform to any preconceived plan, nor must it *promote* the public interest. It is sufficient, if the proposal is consistent with the public interest. Once a transaction is shown to be consistent with the public interest, this Commission has no choice but to approve it. Section 5(2)(b) prescribes that the Commission "*shall* enter an order approving and authorizing such transaction, upon the terms and conditions

and with the modifications * * *" it finds to be just and reasonable.

It is important, therefore, to clearly understand this standard—consistency with the public interest. As defined in *Pacific Power & Light Co.* v. *Federal Power Commission*, 111 F. (2d) 1014, 1016, it—

> * * * does not connote a public benefit to be derived or suggest the idea of a promotion of public interest * * * the thought conveyed is merely one of compatibility.

This is the meaning the Commission has given the term repeatedly in a long line of cases begun as early as *Scott Bros., Inc., Collection and Delivery Service*, 2 M.C.C. 155, 164 (1937).

Moreover, the term is further limited in the sense that our concern with the public interest is not in reference to the general public welfare, but rather in "direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency and to appropriate provision and best use of transportation facilities." See *United States* v. *Lowden*, 308 U.S. 225, 230 (1939).

Ignoring these standards, the majority clearly has erred in imposing the standard that the advantages of the merger must outweigh its disadvantages "*beyond a reasonable doubt.*" It thus imports the extreme evidentiary burden heretofore imposed only in criminal cases, and, nowhere in our system of jurisprudence, applied to civil proceeding—either in court or before administrative agencies. Still far afield, the majority, with demagogic overtones, suggests a standard that

would attempt to weigh human suffering against monetary benefits to corporations. While championing the cause of humanity as against corporate profits may on proper occasion be lauded, its emphasis in this decision is misplaced. As a legal-technical matter, it has little relevance here; and as a factual matter, the likelihood of human suffering is nowhere in evidence.

The majority is further at odds with the law in its refusal to weigh the transaction in a fact frame likely to ensue after the application of just and reasonable modifications and conditions. The law, particularly sections 5(2)(b) and 5(11), confers the power to approve a merger either as applied for or as qualified by such terms and condition as the Commission deems just and reasonable. *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 74-75 (1944). Thus the Commission can participate in the attainment of an adequate transportation system, by imposing such conditions as might be appropriate to make the transaction consistent with the public interest. The record here is pregnant with feasible and worthwhile suggestions by which this transaction could bring a much improved transportation system to the territory involved. But the majority is content to rely on data relevant merely to the present competitive situation. And in doing so, it permits opportunity to pass us by. As aptly stated by the poet:

> For all sad words of tongue or pen, The saddest are these: "It might have been."

Finally, I cannot accept the substitution of the judgment of States appearing as advocates for the

judgment which the law requires this Commission to exercise. The majority labor to create the impression that "vitally affected agencies of government," are better informed, more sophisticated in these technical matters and more prudent than the shipping public and the general public.

The simple answer is given by the Department of Agriculture when it called upon the Commission to recognize that, except for itself and another Federal agency, all parties have approached this proceeding from the point of view of self-interest, and that "Even the State commissions and the States look at it from a local point of view."

But even accepting the majority's premise, it should be noted that only 3 of the 11 intervener States were in ourtright opposition to the merger. All the others would approve the transaction as presented or with appropriate conditions. In addition, about 400 municipalities, civic groups, firms and individuals supported the merger in one form or another, all interested in but one thing—better, cheaper transportation. This objective, I submit, should also be the Commission's.

On the facts, we are told that the existing competition between the two Northern Lines produces greater benefits to the public than the merger would. But there is a notable lack of specificity as to evidence supporting such a conclusion. The recent speed-up in Northern Lines schedules is cited as an example of what competition can do. I cannot overlook the fact that the speed-up was only possible through increasing

motive power while decreasing pay load. Defensive measures like that require expenditures disproportionate to the gains; and they must be deemed inefficient in view of the fact that the merger could produce even faster schedules without shortening trains and adding locomotives.

The evidence is clear and overwhelming on the harm perpetrated by the competitive situation as it is today in applicants' territory and will continue to be as a result of the majority's decision. Gateways are barred; routes are restricted; transit, stop-off and diversion privileges are severely curtailed; shippers are held captive to the Northern Lines over great distances; shipper access to markets and sources of supply is limited; the Milwaukee, notwithstanding its superior grades and shorter route, is hamstrung and short-hauled, and is continuously losing effectiveness as a competitor in this territory, primarily as a result of insuperable interchange restrictions imposed by the Northern Lines; C&NW is subjected by the Northern Lines to similar handicaps. All this could be changed —and all the railroads involved, the shippers, the economy of the territory and the general public would be the beneficiaries—if this merger, properly conditioned and modified, were to take place.

The curtailment of competition between the two Northern Lines, feared so much by the majority, bears closer scrutiny. What would be its real, practical effect? West of Montana, the UP provides effective competition to Portland, and the Milwaukee, to Seattle. East of North Dakota, the Soo Line, Milwaukee, C&NW and other railroads are effective competitors.

Across Montana and North Dakota, where the majority insist NP and GN must be retained as competitors, inter se, those two railroads are as much as 200 miles apart—hardly in a position to compete for the same shippers. On the other hand, the Milwaukee intertwines or parallels at close distance the NP route for almost the entire distance. An improved, ratemaking Milwaukee could provide competition of an intensity not heretofore seen in the territory.

On transcontinental traffic, which has little relevance to the 4-State tier placed under the majority's microscope, there are numerous effective routes both north and south of the Northern Lines. Western Pacific with its connections, UP, D&RGW, Soo Line, the Milwaukee, and even SP and Santa Fe vie for the same transcontinental traffic as the Northern Lines.

Intermodal competition, present and prospective cannot be summarily dismissed. More than 240 motor carriers serve practically all points on the Northern Lines. The average length of haul for classes I and II motor carriers in the territory is over 400 miles—about the same as the Northern Lines average length of haul. Add to these, private and exempt motor carriage—all fully capable of handling grain, fruits, meats as well as forest and mine products—and it becomes apparent that motor carriers are a competitive force to be reckoned with.

The Columbia and Snake Rivers from Lewiston, Idaho to the sea, and the Missouri River from Fort Benton to the Mississippi River, in themselves and in combination with motor carriage, will bring effective

intermodal competition into the heart of the vast grain, forest and fruitlands of the northwest.

With a Milwaukee railroad, freed of its present shackles and capable of increasing its traffic in the amount of $10 million or more per year (using the more conservative estimates provided by the record); and with the ever-increasing intermodal competition; there can be little doubt that after the merger (with appropriate conditions), the competition in the territory would be more effective than it is today.

The merger's effect on rail employees requires attention. This Commission has the power, if it would but exercise it, to insure no loss of employment as a result of this merger. While it is true that over a 5-year period, 5,200 positions would be eliminated, no jobs would be lost. Even under the applicants' proposal unmodified, almost immediate re-employment by the applicants would be available for 4,260 employees through normal attrition. These jobs would not require substantial change of location. Almost 1,000 jobs would be opened in new locations.

If the Milwaukee were to grow, as would be likely, other jobs would be created. In addition, improved transportation in the area would redound to the benefit of the entire economy there, thus opening up other employment opportunities.

Regardless of what the Commission does in this case, automation and technical advancement are going to eliminate jobs. Our task is not to freeze men in unneeded jobs, but to encourage the creation of an atmosphere of mobility in which employees can con-

veniently move into new, essential and remunerative employment. The opportunity to undertake this task is at hand in this case. A denial of this application spurns that opportunity.

COMMISSIONER WALRATH, whom COMMISSIONERS TUGGLE, MURPHY and GOFF join, dissenting:

The majority has chosen to disregard the real meaning and legislative intent of the plain wording of section 5(2)(b):

> * * * If the Commission finds that, *subject to such terms and conditions and such modifications as it shall find to be just and reasonable*, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it *shall* enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable; * * * [Emphasis added.]

Though not as binding as the statutory mandate in legal authority, the well known line from a time-honored hymn suggests itself as the basic theme or text for this dissenting expression—that the moment of decision comes "Once to every man and nation." While that may understate this Commission's chances, assuredly the opportunity for the bold and imaginative, not to say dynamic, statement of regulatory policy and exercise of transportation statesmanship offered by this case comes with rare frequency. Indeed, it is the nature of the basic transportation law and industry that such opportunity is almost confined

to cases such as this, arising under section 5(2) and involving far-reaching proposals submitted by significant segments of that industry, but (and most importantly) subject to such reasonable conditions as this Commission may impose.[1]

The majority's out-of-hand rejection of that opportunity here smacks of an affinity for the *status quo* indicating a casual lack of appreciation of its realities as spelled out on this record (both by witnesses in support of and in opposition to the applications), as well as an apparent leaning toward regulation by slogan (in the west and northwest) and represents an inconsistency difficult to explain away. Such characteristics are emphasized by the report's repeated tendency vigorously to march up to many of the fundamental issues only to fall away in apparent confusion and, ultimately, to seek refuge in the obsolete application of the generally valid concept of competition.

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[1] It should be noted that even those who compose the majority here, in since voting to approve the Pennsylvania R. Co.—Merger—New York Central R. Co., the report in which is also released today, emphasize the New Haven as part of a viable system in the Northeast. In similar vein, the majority in the *Norfolk and Western* case preserved the opportunity, in a broad sense, of including at an appropriate time, several of the East's smaller railroads. So, too, in the *Seaboard-Coast Line* case were we careful to assure the opening of the Jacksonville gateway and of possible ultimate inclusion of the F.E.C. All of these cases are illustrative of a forthright recognition of our responsibilities under the Interstate Commerce Act. It is difficult to understand an "area" approach to our responsibilities when there is little or nothing in principle or in *relevant* fact to distinguish the opportunities presented by the respective cases.

Such treatment, if it were not so injurious to the potential of the national transportation system, would, all things considered, not be without a certain humor; but the administrative process, the transportation community, and the Nation are entitled to more.

Probably the most notable thing about applicants' proposal is the degree of its public acceptance and support in an area noted for antipathy and even hostility toward large railroads. Recognizing the right, indeed, the duty, of State and local government officials to express their viewpoint of the public interest, and to emphasize possible adverse local effects, the fact remains that the proposal in its principal aspects has the *overwhelming support* of those most directly affected by the amount and quality of railroad service. It is noteworthy, too, that much of the considerable public support evidenced is for *far more than the plan as proposed* by applicants. That support would impose on applicants' plan such suitable conditions as could cause it to affect beneficially the entire balance of transportation in the Western and Northwestern United States, with ramifications reaching into Canada and the remainder of this country.

Under the *status quo*, the Milwaukee is destined to a marginal and steadily deteriorating existence, with its shippers and service areas, as well as those of applicants, surely paying the price of its inability to reach Portland (except through a left-handed interchange with Union Pacific at Marenga), its inability to obtain a long haul on transcontinental traffic that does not both originate and terminate on its own lines,

its inability to offer stop-off service except at points on its own lines, and its various other natural and artificial handicaps fully developed of record. What Portland traffic it now has is shown to come from loyalty for its past efforts and hope for its improved future as a result of these proceedings, but, in ultimate self-interest, its Portland supporters cannot stay with it unless relief is forthcoming here.

So, too, under the *status quo*, will the Western Pacific and C&NW and their shippers and service areas continue as at present, with the Western Pacific forced to litigate at every turn for an equality of competitive opportunity on traffic to and from the area served by Northern Pacific, and the C&NW having to forego its long hauls on transcontinental traffic in favor of the Northern Lines and to suffer from outmoded arrangements at its interchange points with them. And for what? In order, according to the report, that the affiliated Northern Lines (in fat and happy, but hardly naive or accidental, joint control of the SP&S on the west and the Burlington on the east, to say nothing of the Midland in the middle) will continue to split the lion's share of the northern transcontinental traffic and revenues between them and so preserve a facade of competition; surely this record makes it clear that what the area really needs is the solemnization of their common-law marriage and the use of their healthy desire therefor to benefit and uplift the surrounding countryside, replacing the present "family" competition with the genuine and authentic competition possible under a combination of this Commission's section-5 conditioning power and the ability

of the other railroads in the territory to make such conditions work for the public good.[2]

Confined to railroads the proposals, as modified by appropriate conditions warranted from the record evidence in these proceedings, bespeaks an entire new prospect for *intramodal* competition in the efficient and economical movement of transcontinental, western, and Pacific Coast traffic. It has long been recognized, and this record leaves no doubt, that the transcontinental routes of the Northern Lines under present conditions have a virtual lock on traffic routed through Spokane and the Twin Cities.[3] Even though Milwaukee has the shorter route (between Twin

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[2] The report is technically correct in noting that there is no question here of inclusion of other railroads in the territory, but it should be noted that the conditions sought by other railroads, particularly Milwaukee and C&NW, are not far removed in spirit from inclusion petitions under section 5(2)(d), and in view of their importance to the case, are entitled to a broader consideration than they receive.

[3] The impressive and startling, and discouraging, factor in the gateway statistics set forth in the report is not that, "After merger, New Company would be the dominant transportation enterprise operating between the Northwest and Twin Cities" (*the affiliated Northern Line applicants are now*), but rather, the paucity of the Milwaukee's share of that market. Wringing hands over the Northern Lines' shares, separately or in combination, will not help the Milwaukee or its shippers or the areas it serves; using the leverage afforded by the applications, however, the Milwaukee could have the opportunity of increasing its share to the great benefit of the entire transportation system and the users thereof, even to reversing the trend of agricultural-commodity diversion to unregulated carrier services which threaten applicants and other regulated carriers alike.

Cities and Seattle), its handicaps make its transcontinental traffic and service almost nominal as against those of applicants, between whose principal lines it lies (and is pressed), and of the other strong transcontinental railroads to the south.[4] On the West Coast, the Western Pacific occupies a comparable, though not as hopeless, position; obtaining 20 percent of its total freight revenues from Bieber gateway traffic, however, its stipulation with applicants would not only retain for it the opportunity of keeping its Bieber traffic, but woud gain for it and its patrons and connec-

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[4] This is not an imagined situation. The representative of the largest group of shippers in the case (fundamentally in support of applicants) merely reflected the record when he said at oral argument before us:

> If those two conditions (Portland entry and elimination of dual basis of switch charges) are put in, then we will have a strong and vibrant effective Milwaukee competitive situation that is superior—yes, I repeat, superior to the situation that exists today. Not one person has been able to tell us that the Milwaukee would not be a more effective competitor and do a better job if they could in fact tap the California market through the Portland gateway and have access to the lumber and other products that would be available through that area. *Without it, we see nothing but disaster for the Milwaukee.* With the Portland gateway and the elimination of the non-competitive switch—which again is temporary [sic, contrary] to the applicant's position, but we believe that would do a world of good for the shippers and the railroads—*we will not diminish competition, but will improve it materially for all concerned.* [Emphasis added.]

It seems clear that if additional conditions were added, the position of the U. S. Department of Agriculture would not be dissimilar.

tions an equality of competitive circumstances now denied them.[5]

Nor would the benefits of a suitably conditioned transaction be confined to an increased tempo in intramodal rail competition. The record is statistically replete on the subject of the growth and vitality of other forms of transport, principally motor (common, contract, private, and exempt), and establishes beyond doubt that the renewed vigor the proposal, as conditioned, would bring to rail transportation and rail competition would enhance the ability of the area's railroads, individually and as a group, effectively to compete with those other transport modes to the ultimate public benefit.

It is true, as argued by Justice and others, that much of the Northwest's traffic is such that neither the motor nor the water carriers could under present conditions completely replace the railroads in its efficient

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[5] WP is even now handicapped in competing with SP by the refusal of NP to join it in through routes and joint rates on the same level as those between the SP and NP, resulting in several formal complaints by the WP over the pa 2 decades, capped by *Western Pacific R. Co.* v. *United States,* U. S. , in which the Supreme Court only recently remanded to the lower court, for decision on the merits, our order in *Western Pacific R. Co.* v. *Camas Prairie R. Co.,* 316 I.C.C. 795 (the Portland Gateway case), on the proposition of law that WP is a connecting carrier within the meaning of section 3(4) even though having no physical connection at Portland or even entering that city, but merely by being an "interior segment" of a through route to and through that point (via Bieber) whose other participants (GN and Santa Fe) are willing to participate in the necessary arrangements.

transportation. Given intelligent rail consolidation in an atmosphere of competitive equality, however, they should not have to. But if they did, history would seem to indicate that they could give a good account of themselves.[6]

Justice raises the point, of course, not as an indication that rail service as such would go out of existence if the proposal is consummated, but to emphasize the importance of rail service, and, therefore, the importance of *competitive* rail service, an importance which, in this territory, should not be depreciated. That importance, however, through this Commission's conditioning power under section 5, could be recognized to such an extent that *rail* competition would actually be *enhanced*, as would the opportunities of shippers and areas to realize the benefits of that competition in the form of rates and service with all the tangible and intangible factors those terms embrace.

Thus, consideration of these applications does not begin and end with the proposal itself, complex as that

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[6] See *Pacific Inland Tariff Bureau* v. *United States*, 129 F. Supp. 472 (1955), in which the court reversed this Commission's finding that certain rail rates on petroleum products eastbound from North Coast points were just and reasonable for the reason, inter alia, of their undetermined effect on highway and barge carriers, the court citing testimony of World War II shortages of rail equipment which left the outbound grain and inbound petroleum-products traffic of the Inland Empire to apparently exclusive barge and truck movement, and of service advantages of those modes. Evidence herein pertaining to intermodal competition for such traffic confirms that the motor and barge success was not just a wartime phenomenon; cf., *Schaffer Transp. Co.* v. *United States*, 83 (1957).

is, but is interwoven with the entire transportation system in the affected territories, which, with connections, includes much of the Nation and not merely the considered operating areas, although the interests of the later are extremely important in any ultimate disposition. Such general concepts as equality of competitive opportunity, through routes and joint rates, coordinated transportation, reduction of paperwork, elimination of duplication, and efficient use of rolling stock [7] and other transportation facilities are latter-day transport cliches, all looking toward better transportation at lower costs passed on to the consuming public, but their generally recognized desirability does not carry the day for them or their proponents in legal confrontation with specific terms of the law and interests vested thereunder. They are all elements, implicit or explicit, of the national transportation policy, in whose light all provisions of the act are to be administered, but neither jointly nor severally do they automatically negate or overcome the more limited specific provisions of the act in the context of the usual case.

Thus, in ordinary circumstances this Commission's authority to direct through routes and joint rates is limited by the qualifications written into sections 15 (3) and (4) conditionally prohibiting the shorthauling of originating carriers and outrightly prohibiting

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[7] It is passing strange that only days after issuing the most far-reaching car-service order ever put out by this body, designed primarily to get cars back to the Northern Lines (by name), the majority should here belittle the plans of those very roads to obtain better car supply and usage.

route-and-rate establishment for the purpose of assisting a participating carrier in meeting its financial needs. Under most of the specific statutory provisions there is, and properly so, a vast difference between what is generally, or even specifically, desirable as a measure of the general public good and what is lawful or unlawful. Under section 5, however, this Commission's latitude for the intelligent and reasonable conditioning of its approval of any transaction submitted by voluntary applicants encompasses the *whole spectrum* of the public interest in transportation.[8]

In any such situation, the applicants may or may not consummate an approved transaction, the voluntary nature of the process being maintained throughout; if they do consummate, however, they are bound to observe "such terms and such modifications as (we) shall find to be just and reasonable."

The majority's report here, in seeming to assume that an appropriately conditioned approval would not be acted on by applicants, is not only overly paternalistic in making applicants' decision for them, but, indeed, seems to exhibit an underlying and unhealthy fear of what that decision would be. It would be refreshing to see more confidence in the judgment decisions of the new management now heading our Nation's railroad industry.

The restrictive wording and the generally strict construction of the statutory through-route and joint-

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[8] And, as evidenced by the *Penn-Central* decision *supra*, there is unanimous Commission agreement that this is proper in the east. See also our *Norfolk and Western* and *Seaboard-Coast Line* reports.

rate provisions make for few real breakthroughs in situations such as those in which the WP and the Milwaukee find themselves; see the *Portland Gateway* case, *supra*, in which Justice sided with the WP.[9]

Thus, there is here the opportunity to refashion in the public interest considerable railroad structure and practice which, in one sense, has "just growed" and, in another, has been constructed primarily in response to private-interest demands, sometimes coinciding in serendipic fashion with the public interest but sometimes in derogation thereof, and to do it, not by fiat, for which there is no authority, but merely by giving the applicants a choice (or, as in the case of the stipulations, by approving what concessions applicants have already voluntarily made).

This is not to say that this Commission should look on itself as "the new empire builder," as Minnesota regards the examiner as having done, but only to indicate the strong belief that the record herein requires acknowledgement and exercise of its far-reaching authority and responsibility under the law, rather than a backing-and-filling approach which leaves the innocent reader confused (and the knowledgeable one annoyed) before plunging into the ultimate decision on the basis of a single aspect of the case.

It is true, as it has always been true, that the Northern Lines are competing railroads and that approval here would eliminate what competition there is between them. And, although it is now settled with

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[9] Causing the WP some wonderment here when, in its exceptions, Justice attacked the WP stipulation.

some finality that section 7 of the Clayton Act is not controlling of our action on proposals submitted under section 5(2) of the Interstate Commerce Act (*Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154 (1965)), we remain under the duty to "estimate the scope and appraise the effects of the curtailment of competition which will result * * * and consider them along with the advantages of improved service, safer operation, lower costs, et cetera, to determine whether the consolidation will assist in effectuating the overall transportation policy," *McLean*, and to treat the problem as "one of accommodation of section 5(2) and the antitrust legislation," *Minneapolis & St. Louis*.

Proceeding in that vein, it is apparent that the elimination of competition between the Northern Lines as spelled out on this record would not so much adversely affect any result arising from that relationship as it would the competitive effects as between them, on the one hand, and, on the other, other rail carriers, particularly Milwaukee and C&NW. Granted that there is some market and cross-country competition between the Northern Lines in the great geographically intermediate area they serve, such competition is insignificant compared with their terminal-to-terminal competition, particularly as indicated by applicants' station and traffic figures as restated by opposing forces, and here made the sole determinant of the case in the majority's report.[10]

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[10] *Those figures, however, as used in the majority's report, bear further examination.* It will be seen that the important stations are those in class 2, which, although ac-

[Footnote 10 continued on next page]

Without condemning that competition as wasteful, it would ignore reality not to note that what transport competition there is between the Northern Lines prevents such desirable things as through routes and joint rates, with attendant shipper privileges and pub-

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[10] Continued
counting for only 7.47 percent of all stations in the four States, produce about 38 percent of gross revenues and 28 percent of total tonnage and, when coupled with class 1 stations therein, account for respective approximate percentages of 11.72, 44, and 33. The class 1 stations, at which all rail competition would be eliminated, produce percentages of revenues (6.61 percent) and tons (5.60 percent) only slightly in excess of their number (4.25 percent); the important differences come from class 2 stations, where there would continue to be available, after merger, the service of at least one railroad other than New Company. Yet the report, almost shouting "Eureka," seizes on the percentages alone as the basis of the reason for disapproval, overlooking the fact that those percentages can't help being disproportionate because of the nature of the principal class 2 stations as terminals and the duopoly of the Northern Lines on rail transcontinental traffic moving across the northern portion of the nation, and assuming that the whole of the revenue and tonnage percentages reflect competitive traffic as between the Northern Lines, when this record makes it clear that much of such traffic is not really competitive at all but depends for its routing on shipper location and preference, with the originating or terminating carrier having a strong advantage in obtaining its long haul, especially as the game is played in the considered area.

The report notes, too, that "Applicants also state that, with few exceptions, all points now served by more than one railroad (would) continue to be served by more than one railroad after merger." Applicants do more than state that; they show it. If the report's point is that there is more to the competitive picture, well and good; but applicants' showing should not be watered down and vitiated by the implication that it is no more than a contention.

lic benefits, between them, apparently to their immediate advantage as individual railroads, but hardly to the benefit of railroad traffic or the direct and indirect users of railroad service among the public; there is indication on this record that such manifestations of the "competitive" spirit actually result in the diversion of traffic to motor movement, including *private and exempt* carriage. The real adverse effect of the Northern Lines' consolidation would seem to fall not so much on those shippers immediately deprived of competitive rail service thereby as on those shippers and areas dependent for rail service on the smaller and weaker railroads which would suffer the brunt of New Company's consolidated strength in the overweighted routing battle which would inevitably follow. As even applicants must recognize (the report shows signs of doing so, but ultimately washes its hands of the matter), it is those shippers and those areas which have the most to gain or lose as the result of applicants' proposal. And it is those interests most of the conditions sought herein are primarily designed to benefit, although they would not be without similar effect on others as well, particularly those shippers and areas which have, or would have, the direct advantages of applicant-Milwaukee competition.

It is true that applicants might feel as they did following the *Acquisition* case, that the price put on their proposal by *appropriate* conditions would be too great; if so, they would be free to disregard any approval given or to contest the reasonableness of any conditions. Having gone through the study, discussion,

and agreement necessary to formulate the proposal with a showing of considerable transportation statesmanship (begun, in its modern phase, over a decade ago), however, their appreciation of the overall situation and the fast approaching future might well convince them of the desirability, indeed, possibly the inevitability, of the conditions which we might have decided were in the public interest to impose. (Here, again, it is not amiss to suggest that it would be refreshing to see some evidence in the report of a belief that modern management is completely capable of rational decisions consistent with the public interest as well as its own.)

Nor should we be unmindful of the problems consummation of the proposal, even as conditioned, would bring to individual employees and their families and State and local governments throughout the affected area. Although our primary concern is for the public interest as directly related to "adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and the best use of transportation facilities," *N. Y. Central Securities Co.* v. *U. S.*, 287 U.S. 12 (1932), we are directed by the governing statute to include as a specific factor in the overriding public-interest test "the interest of the carrier employees affected."

As argued by Minnesota, factors other than employee interest and the three additional specified considerations (adequate service, effect of inclusion or exclusion of other railroads, and total fixed charges) are encompassed in the language "the Commission

shall give weight to the (indicated) considerations, *among others*" [emphasis added], and certainly we are not restrained from considering thereunder a transaction's effect on the political entities through which our governmental system functions. It is clear, however, that our primary concern is and should be with transportation; indeed, with no intent to exclude the human values involved, it is significant that the Supreme Court has seen the ultimate benefit of labor-protective conditions to the overall transportation system as one of the bases upon which the statutorily expressed Congressional policy thereon is bottomed. *United States* v. *Lowden*, 308 U.S. 225 (1939), *Interstate Commerce Commission* v. *Railway Labor Assn.*, 315 U.S. 373 (1942).[11]

From the foregoing, it is apparent that even with a broad view of our jurisdiction and duty under the governing statute, it is difficult to get appreciably distant from the fact that our primary charge is as to transportation, "its essential economy and efficiency," and that, although nothing transportationally touching the overall public interest is irrelevant to our considera-

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[11] It is appropriate to point out here that impressive circumstances of record indicate that attrition conditions, long sought by labor interests, would, with appropriate modification in their terms and flexibility in their application, be desirable and without undue harm to the interests of either management or labor. Indeed, negotiated agreements of a tentative nature, reported in the press since closing of the formal record, indicate that the parties themselves have been voluntarily resolving those issues as contemplated by section 5 although the Brotherhoods concerned have not changed their position of opposition to the proposal.

tion, our paramount concern must be as propounded by the Congress and interpreted by the Supreme Court.

Returning to the majority's report here, it is its own worst enemy, both in its nonfeasant treatment of the overall issues, and in that certain of its specific affirmative statements draw questioning attention to themselves. The report couldn't be more correct in (and this separate expression hereby adopts its statement at the beginning of its discussion on the competitive aspects of the proposal that, "*The most significant issue in these proceedings is the effect on the competitive balance of transportation service and facilities in the territory served by the Northern Lines.*" [Emphasis added.] From that point on, however, agreement is hard to come by except as to the report's sprinkling of surface obeisances to conformity with the law of the land in these matters.[12]

Not content with a general unbalanced presentation of record data, the report compares the (arbitrarily) reduced savings possible here with applicants' *gross* revenues, when it is clear that those savings would show up in *net* revenues.

The report also seems to proceed on the theory that

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[12] The Supreme Court may be surprised to read that it "extended" *McLean's* rationale in *Seaboard*, 382 U.S. 154 (1965) "to mergers alleged to be inconsistent with the policy of section 7 of the Clayton Act." Its *per curiam* order therein does not read as if it were of the opinion that it was going beyond *McLean* and *Minneapolis*, but, rather, seems to indicate some wonder that, with those guideposts in place and lighted, there should have been so much question about the specific issue of law involved there.

the rationale behind the merger provisions of the Transportation Acts of 1920 and 1940 was different because the provisions themselves were different, and even attempts an illustration of the "practical difference" therein. The true "practical difference," however would appear to be that the later provision is practicable and workable whereas the earlier one was not.

In this connection, the report apparently adopts at face value a contention by Justice that the examiner interpreted section 5 as "favoring" rail mergers. Actually, as both the report and Justice make clear in their small print, the examiner's words were (at page 422) that the form and history of section 5(2) indicate that its purpose is to "foster and encourage" voluntary proposals by carriers, and (at page 419) to "foster and provide for the voluntary union of carriers into a sound and adequate national transportation system." The examiner did not make those statements in a vacuum. The one made at page 419, three pages before the one at page 422 quoted in this report, went on to cite "*County of Marin* v. *United States*, *supra*," followed by: "Transactions such as involved herein must be considered in the light of the national transportation policy, as declared in the act. Cf. *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455 (1950); *Spokane International R. Co. Control*, 295 I.C.C. 425 (1956); *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298, 315 (1954), and *Seaboard-Coast Line case*, *supra*."

In *Marin*, the Supreme Court said:

> The congressional purpose in the sweeping revision of § 5 of the ICA in 1940, enacting § 5(2)(a) in its present form, was to *facilitate* merger and consolidation in the national transportation system. [Emphasis added.]

In *Detroit*, this Commission said (cited and substantially repeated in *Spokane International*):

> The provisions of section 5(2) of the act do not contemplate the unification of only those railroads that no longer can continue under separate ownership. The purpose of the law is to *foster* and *promote* the voluntary union of carriers into a sound and adequate transportation system for the future, and such union is permissible if it is otherwise consistent with the public interest. [Emphasis added.]

In *St. Joe*, the Supreme Court said:

> Hence, for the first time (in 1919, preliminary to the Transportation Act of 1920), government *encouragement* of railroad consolidation was discussed. [Emphasis added.]

The majority and Justice are clearly right in believing that in any specific case the act is neutral and is weighted neither for nor against a proposal, but they misread both the examiner's report and Supreme Court and Commission cases if they believe the examiner's language said more than it purported to say; the point is that proposals may be made and, *if* consistent with the public interest, approved.

Thus, it is clear that there is no basis for the report's implication that there was a change in 1940 of

Congress' 1920 policy with respect to rail unifications.[13] Whether that policy can fairly be stated as "favoring," it surely contemplates unique acceptance of appropriate unifications as a means of insuring a sound transport system, as this Commission and the courts, especially the Supreme Court, have always recognized.

The report's reaching back to the *Pearsall* and *Northern Securities* cases is forgivable, and even helpful and informative, as a matter of historical background, but to place any reliance on those cases for the result here, as this report does, is to do violence to history. Not only were there no motor carriers at the time (nor competitively effective barge operations) but, in truth, there was no Milwaukee as even a nominal transcontinental carrier. The dissents in the *Acquisiton* case, also relied on by the report, are more in point in that Milwaukee was a factor at the time (but

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[13] Although the report here would apparently like to overlook it, the Court, in *Marin*, included a very significant statement which is still the settled law of the land, leading up to it by noting that "after 20 years of trial, the [1920] approach appeared inadequate.":

> * * * the result of the act [of 1940] was a change in the *means* while the *end* remained the same. The very language * * * expresses clearly the desire of Congress that the industry proceed toward an integrated national transportation system. * * *

In the *Penn-Central* case, the Commission correctly uses that pronouncement to bolster its approval of the Eastern merger, as it in principle did in the south in the *Seaboard-Coast Line* case. Anyone confused by obviously inconsistent emphasis on "established" legal principles, depending on geography, has good reason.

motor carriage as an intercity activity was still in its infancy and the interstate highway complex as we know it today undreamed of; our rivers were not improved, and modern, superhorsepower, barge transportation was not even on the drawing boards).

The railroads will undoubtedly be happy to hear that although their "share of the transportation market fell from 45 percent in 1959 to 43.02 percent in 1963, long-term trends are favorable." This is the face of a fall from 66 percent in 1946!

The report states that the "applicants are highly prosperous by railroad standards." Thus, on the one hand, and overall, the applicant carriers are pictured as prosperous; the qualification, on the surface, seems a natural one. On the other hand, the qualification, when understood, runs deep. The record shows that applicants' rates of return are low by any standard: Great Northern's highest and lowest in the 11 years between 1951-61 were 4.74 (1956) and *2.47* (1961), Northern Pacific's 3.99 (1957) and *1.26* (1961), Burlington's 4.65 (1952) and *2.14* (1960), and SP&S' 5.40 (1953) and *1.72* (1961). Another indication of what "by railroad standards" really means is apparent from the listing of 352 domestic corporations in order of rate of return on equity in the January 1, 1966, issue of *Forbes*, where the first ranked railroad, Norfolk and Western Railway, is listed as No. 272 with a return of 8.9 percent and the two largest applicants here are listed as Nos. 335 (Great Northern) and 339 (Northern Pacific), with returns of 4.3 percent and 3.6 percent, respectively. The first *324* com-

panies listed had returns ranging from *6 to 50* percent and the first *232* were at *10 percent or better.*[14]

After stating that "The market criteria of *Brown Shoe* can be applied here, if at all, only with great caution and substantial qualification," the report throws caution and qualification to the winds and, trying in euphemistic desperation to avoid use of the technical terms connected therewith, proceeds to treat railroads as if they were banks or even shoe companies. Unless used in the nature of a defense mechanism, such ambivalence is difficult to reconcile with the apparent single-minded determination to deny the applications. Indeed, the strident insistence apparent in the statement that "we wish to emphasize that we have not appraised the proposed merger by the standards of the antitrust laws," would seem to qualify as a classic example of protesting too much, especially since it is followed a few pages later, after the most superficial survey, with the statement that, "In this case, rail transportation must be considered a distinctive market in its own right," with citations which appear to fall far short of lending that conclusion any real support. Among the achievements of the order in *Seaboard* was the Supreme Court's recognition of the reality of intermodal transport competition.

Simplification of overly garbled issues can be helpful in the treatment and disposition of a case such as

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[14] It should be noted that the Commission uses substantially similar data for the Pennsylvania and New York Central railroads to buttress its approval of the merger of those roads; this separate expression accepts the relevance of such data in *both* cases, as they would be relevant in any case.

this, but over-simplification is dangerous both for this case and for the future. The report admits, in another ambivalent display, that, as a result of a conditioned merger, Milwaukee "would be a stronger carrier in the area extending from the Twin Cities and Head-of-the-Lakes to the Pacific Northwest," but proceeds to play down that result with the statement that then "there would be one very large and strong railroad and one relatively weak carrier, whereas there are today two strong rail carriers and one relatively weak carrier." "Very large and strong," "strong," and "relatively weak" with respect to what? Each other? In context, that would seem to be the meaning, but what relevancy does it have to the actual situation? Even assuming that the Northern Pacific (aside from its tremendous land holdings) can be called a "strong" railroad,[15] its present common interests with the Great Northern are overlooked in the comparison. More importantly, so are the interests of shippers and consumers in having the Milwaukee made stronger in its own right in order adequately to serve them, to give them an alternative and genuinely competitive rail service (thus having for the first time, some influence as a rate-making carrier), and to enlarge and broaden their sources and markets, results which, as a practical matter, can derive *only* from the instant proposal.

While it is easy to agree with the report that the important competition lost by the merger would be

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[15] Were it not for its natural-resources earnings, the Northern Pacific would sometimes be close to the line.

that between the Northern Lines,[16] it is difficult to follow it beyond. In depreciating the value of motor and water competition "in the long-haul movement of agricultural, mineral, and forest products," the report not only ignores the record here, but is reminiscent of the attitude of too large a segment of rail management for too many years of rising rates based on the apparent belief that there actually was such a thing as captive or noncompetitive traffic. It is more than mildly ironic that, having learned the truth the hard way, and with what should have been some assistance from this Commission's increasing admonitions to the contrary, railroad management should *now* be told by a majority of this body that there really *is* such traffic after all.

Of course, the report is not wholly wrong; to the extent there is *some* such traffic, there is more of it in this area than in most of the rest of the country. But even here it must be looked at in the undisputed record-based perspective which establishes the following formidable competitive forces:

Mississippi River between Twin Cities and St. Louis;

Illinois Waterway between Chicago and the Mississippi just north of St. Louis;

Missouri River between Sioux City, Iowa, and the Mississippi just north of St. Louis;

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[16] Applicants, in their insistence on inclusion of Burlington statistics in the competitive picture on the ground that Burlington is an integral part of the proposal, seem to overlook their own testimony and argument in other respects leading to the correct conclusion that Burlington is essentially complementary to, rather than competitive with, the Northern Lines.

Columbia River between the sea and a point above Pasco, Wash.;

(All the above being presently navigable and *busy* with barge traffic.)

Programs under way to improve existing waterways, and to extend barge navigation

(1) up the Snake River from the Columbia to a point above Lewiston, Idaho, and

(2) up the Missouri beyond Sioux City as far as Fort Benton, Mont., scarcely *35 miles east of Great Falls* (the very heart of the key State of Montana);

Airline domination of long-haul, common carrier passenger traffic and increasing airline success in obtaining highly rated freight traffic;

Coastwise movement of petroleum products by tanker and inland movement thereof by extensive and expanding pipeline, barge, and truck;

Busline inroads in mail and express formerly handled by rail;

248 class I motor common carriers serving points on applicants' rail lines, 212 of which, since 1947, and 36 in the intervening years 1948-58, had by 1959 increased their operating revenues by almost 330 percent ($1,489,214,000) and their ton miles by almost 247 percent (23,085,-155,000), and which by the latter year had an *average* length of haul of 402.4 miles, against *average* hauls by applicants in 1960 of 461 miles (NP), 330 miles (GN), 323 miles (Burlington), and, for Milwaukee, 355 miles;

Showing of the Tolan Group (composed primarily of hundreds of supporting shippers) that Washington intrastate rail revenues dropped

from $13,658,861 in 1946 to $10,275,000 in 1960, whereas intrastate truck revenues more than doubled (from $30,861,525 to $65,949,000) in the same period, illustrating the *reality* of truck competition far better than theoretical arguments can be made to emphasize its limitations (see last indented item below re Interstate Highway 90-94 for a glimpse of the immediate future);

Showing that exempt truck competition on *grain* into the Twin Cities and Head-of-the-Lakes now extends to 400 miles, with no limit where otherwise empty "backhauls" are involved;

Showing that a processor of animals and poultry at Omaha, Sioux City, and Des Moines, receiving annually the equivalent of thousands of cars of raw materials, has resorted to truck rather than rail movements in many instances because of the difficulty of shipping to points on other railroads from Milwaukee transit;

Showing of one of the nation's largest shippers (mail order house) that trucks benefit from failure of railroads in this territory to liberalize routing , et cetera (evidence also that there is a close limit to the real shipper benefit generated by the type of competition now existing between the Northern Lines);

(Finally, and of utmost importance to the entire area here directly involved)

Construction of Interstate Highway 90-94 between Chicago and Seattle via Twin Cities, being, between the latter points, 241 miles shorter than the route of the Northern Pacific (which it roughly parallels) and 119 miles shorter than the route of Great Northern, and which will allow a

reduction in truck transit time *from 60 to 36 hours* between those points.

Even applicants have no real plans for meeting the expedited motor service, described last above, except by increased operating efficiency and improved service through the proposal here rejected. It cannot be overemphasized that their present faster schedules are the result of light trains and extra power.[17]

How *can* the Commission, on this record, treat *intermodal* competition in low key?

The report's effect is not helped by its failure to bridge the gap between premise and conclusion with reasoned explanation. As they have had occasion to say, reviewing courts must be able to tell what an administrative decision means before they can be expected to perform their own functions. And neither childish fear of a bogeyman nor a determination to reach a particular conclusion despite the overwhelming strength of the record in other directions is easy to garb in the cloak of reason. The different receptions given opportunities relating to the transportation systems of the east and south, theoretically subject to the same principles of law applicable here, will not make the judicial responsibility any easier to discharge.

Ironically, the report's saving grace may thus lie in its very deficiency, since a judicial remand could result in this Commission's facing the real issues pre-

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[17] A fact the report points out in its first mention thereof but disregards with passing remote reference in its conclusion that faster service is a result of competition.

sented by the record and, in time, a more mature judgment.[18]

The report's comment on applicants' "attempted correlation" between their traffic volumes and revenues (the latter dropping far in excess of the former) between 1947-60 and the obvious growth of intermodal competition in that period, terming it "specious because changes due to long-term shifts in traffic * * * were not distinguished from those attributable to cyclical changes in the economy," [19] not only seems to miss the point of the comparison, but brings to mind the fighter who, being assured in his corner after each round that his opponent wasn't laying a glove on him, finally pleaded with his manager to: "Watch that referee then, because someone out there is really clobbering me!"

The report's irresistable impulse toward ambivalence asserts itself again, however, and it concedes that "applicants have lost a significant amount of traffic in recent years to other modes of transportation," but it then indicates a *belief* that such "diversionary losses

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[18] Here it should be added that even those political entities who sincerely oppose the instant proposal, without fully considering what "appropriate" conditions would do to improve transportation in their areas, may well have second thoughts as the next decade unfolds, especially if the underlying thesis of this separate expression is correct and the interests of the shippers and consumers are of overriding concern when measured against short-term local taxation and other political considerations in the context of this case.

[19] During a period of unparalleled growth and prosperity in applicants' operating area!

* * * have been more than offset by increases in traffic resulting from exploitation of the rails' inherent advantage in high-volume, long-haul movements." Such a belief, innocent enough in itself (although probably ill-founded) causes complications when applied uncritically to things that matter. Indeed, two sentences later, the statement is made that, "The extremely long hauls of applicants tend to greatly reduce effective motor carrier competition." This in the face of the aforementioned traffic-revenue showing and the additional showing, detailed above, that as a group the three largest applicants in 1960 had average hauls less than those in 1959 of the class I motor carriers in the area! And what will happen to those statistics when the remaining unfinished segments of Interstate Highway 90-94 are completed?

Switching from the "long-haul, lower-rated production of the west," to manufactured articles, the report has applicants enjoying "a similar advantage on interterritorial movements" thereof. It is not clear what advantage that advantage is similar to, but if it is, as it seems to be, that such traffic is "generally not attractive to motor carriers," this Commission, as the source of motor-carrier operating and merger authority, should know better. But strained conclusions make for strange supporting arguments.

The report's contention regarding water carriage in the area served by the Northern Lines overlooks recent plans for the development of the Snake and Missouri Rivers, listed above, but its statement that Columbia River tonnage "is extremely small in relation to that moved over the inland waterways in other parts of the

country," is probably correct if it be in contemplation of the Great Lakes-Mississippi River-St. Lawrence seaway complex, but what does it mean in the context of this case? So is population in this area "extremely small" when related to the Eastern area of our nation, but are its productive capacity and transportation requirements any less important to our national economy and security? [20]

The report's conclusion that the record "does not establish that intermodal competition poses such a threat to the future successful operations of applicants that the only means of preserving the advantages of rail transportation in the area is to permit the merger here proposed," seems to imply a considerably heavier burden than the statutory one of establishing *consistency with the public interest*, but it is not inconsistent with the report's generally confused rationale.

The report attempts to salvage what it can from the "large number of shippers" who "testified that rail competition is important to them, particularly in the matter of rates and service." The fact that such shippers were in support of applicants or the conditions sought by the other railroads is not without bearing

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[20] The report apparently overlooks, too, the fact that, as recently as February 23, 1966, a majority of the Commission approved as lawful reduced rail rates below fully distributed costs because of "competitive necessity." The competition referred to was *barge and truck-barge movements of grain on the Columbia and Snake rivers* and tributary areas which rail carriers, including the Northern Lines, sought to meet. See *Grain—Idaho, Oreg., Wash., to ports in Oreg., Wash.*, 326 I.C.C. 358.

on the matter; nor is the fact that *appropriately conditioned approval* here could open the whole area to genuine rail competition and give the shippers an actual voice in the optimum routing of their traffic, with some substantial pressures to preservation of competitive service to meet their transport requirements.[21]

Confessing that in measuring the competitive impact of the proposal, "it is necessary to rely to a considerable extent on such imperfect indicators of competition as appear in the record and which appear reasonable in the light of our general knowledge of transportation conditions," the report appears to rely too much on what can only be taken to be theoretical assumption in failure to appreciate the full meaning of the record or a misreading of specifics thereof. Having attempted to view that record objectively and without evangelical enthusiasm to reach a particular result, it is the conclusion of this separate expression that it leads inevitably to approval, but approval subject to appropriate conditions which would actually enhance intramodal competition, realizing at the same time that nothing can or should stiffle (nor discount) intermodal competition. The nation needs a viable transportation system composed of all modes, and conditioned approval here would help considerably in its achievement.

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[21] The record makes it clear that the shippers and receivers dependent upon even the Northern Lines have not been able to accomplish rate and service adjustments to meet their needs.

It is not the purpose of this expression to imply that the Commission is bound to approve the proposal, with or without conditions; obviously, each of us must decide that question after an examination of the law and the record and the interaction of each on the other. It *is* its purpose, however, to say that the record and the applicable law are not to be disregarded (nor regarded lightly because the area of concern is sparsely populated) in the ultimate disposition of any case, let alone one whose modern history stretches over a decade and in which much dedicated effort has been devoted to erecting what now turns out to be a facade of preliminary due process. The constitutional requirement applies to the ultimate decision as well as to the steps leading to it.

Finally, it seems fair to say that from the report's tenor, one would never guess that 70 years have elapsed since the *Pearsall* case, 62 since the *Northern Securities* case, and 36 since the *Acquisition* case, nor that more than the law (case and statutory) has changed since. And since the report relies so much on the *Acquisition* dissents, it may not be amiss to point out here that Mr. Justice Holmes, speaking for the four dissenting justices in *Northern Securities*, said, inter alia:

> A single railroad down a narrow valley or through a mountain gorge monopolizes all the railroad transportation through that valley or gorge. Indeed every railroad monopolizes, in a popular sense, the trade of some area.

Even he had no conception at that time of late 20th Century reality. It is difficult to understand, how-

ever, the majority's reluctance today to recognize that the same economic factors exist in the west as demonstrate their influence in the east and south, especially when the shippers in this case establish beyond argument that the forces diverting traffic from railroads to trucks and from the common carriers to private and exempt operations will prevail under the status quo to the steady detriment of the applicants, un-united, and to the inexorable deterioration of their competitor rail lines less fortunately situated. Can we do less than grant each of them an opportunity to compete on terms under which the shippers will have more than a Hobson's choice? Devoted to the free enterprise system as a way of life, can we shrug off our responsibility in one area while aggressively exercising it in others? Clearly, as a national body, our proper role must be to concern ourselves with the *national* transportation policy, it being, as it is, our specific charge.

The hymnist whose words were invoked at the start hereof had sound advice for those who would dispose of this case on the basis of surface appearance and carefully chosen platitudes:

> New occasions teach new duties, Time makes ancient good uncouth; They must upward still and onward, Who would keep abreast of truth.

This challenge we have met in all recent similar cases. Must we falter now?

COMMISSIONER GOFF, dissenting:

I agree with the other dissenting expressions and would approve the merger subject to conditions. These

would include access to Portland and to northern traffic through Sumas for the Milwaukee; gateway openings to the North Western at Oakes and Crawford in the east; together with conditions throughout perhaps even more extensive than those recommended by the examiner. Thus, we could ensure not less, but more meaningful competition, coupled with better service to the public. Conditions, including those concerning attrition, could be imposed adequately protecting employees in the event that they and management were unable to attain a voluntary settlement.

The majority shows a disappointing unwillingness to grasp opportunity and misapplies the law. It seems swayed by a strange inner reaction to anything but an unqualified application of the anti-trust law. This attraction is so strong that even the Supreme Court's clear direction in three prior cases has not been able to dispel it. The court directs accommodation of the anti-trust law to transportation policy. The majority reverses this. The national transportation policy declared by the Congress tells us "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers."

The narrow, negative approach taken by the majority nullifies Commission responsibility.

APPENDIX A

Great Northern Railway Company comparative income statements

	1958	1959	1960	1964
Railway operating income				
Railway operating revenues	$251,671,504	$254,559,530	$246,024,650	$250,847,871
Railway operating expenses	190,854,844	197,108,501	194,051,856	194,955,985
Net revenue from railway operations	60,816,660	57,451,029	51,972,794	55,431,886
Railway tax accruals	32,386,938	29,861,886	28,701,516	25,815,417
Railway operating income	28,429,722	27,589,143	23,271,278	29,616,469
Rent income				
Rent from locomotives	276,997	223,276	191,135	148,510
Rent from passenger-train cars	1,151,525	1,155,677	1,073,814	1,062,014
Rent from work equipment	14,922	33,275	24,044	45,794
Joint facility rent income	1,694,034	1,579,726	1,612,979	1,543,352
Total rent income	3,137,478	2,991,954	2,901,972	2,799,670
Rents payable				
Hire of freight cars-debt balance	2,249,511	3,111,672	4,473,541	3,704,218
Rent for locomotives	150,698	91,520	89,012	00,351
Rent for passenger-train cars	1,008,478	959,966	920,445	833,421
Rent for work equipment	25,381	3,318	1,513	1,401
Joint facility rents	2,309,822	2,204,193	2,253,291	2,310,072
Total rent payable	5,743,890	6,370,669	7,737,802	6,949,463
Net rents	(2,606,412)	(3,378,715)	(4,835,830)	(4,149,793)
Net railway operating income	25,823,310	24,210,428	18,435,448	25,466,676

Great Northern Railway Company comparative income statements—Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$5,588	$6,390	$4,674	$4,346
Miscellaneous rent income	631,581	679,734	705,401	785,857
Income from nonoperating property	680,997	641,101	545,553	462,461
Separately operated properties-profit			56,447	
Dividend income	6,405,789	6,338,014	6,313,714	7,078,529
Interest income	2,183,588	2,633,966	2,915,729	3,103,177
Income from sinking and other reserve funds	188,062	312,548	262,081	81,783
Miscellaneous income	925,543	721,208	645,151	795,117
Total other income	11,021,148	11,332,961	11,448,750	12,311,270
Total income	36,844,458	35,543,389	29,884,198	37,777,946
Miscellaneous deduction from income				
Miscellaneous rents	51,479	58,837	59,592	51,546
Miscellaneous tax accruals	201,930	209,375	230,670	228,740
Separately operated properties-loss	37,829	161,218		63,802
Miscellaneous income charges	634,399	139,547	383,815	425,676
Total miscellaneous deduction	925,637	568,977	674,077	796,674
Income available for fixed charges	35,918,821	34,974,412	29,210,121	37,608,272
Fixed charges				
Rent for leased road and equipment	1,695	2,071	3,854	1,188
Interest on funded debt	8,195,887	8,261,042	8,337,072	8,009,074
Interest on unfunded debt	3,576		472	
Amortization of discount	139,865	153,026	145,509	131,681
Total fixed charges	8,341,023	8,416,139	8,486,907	8,141,943
Income after fixed charges	27,577,798	26,558,273	20,723,214	28,866,329
Operating ratio	75.04%	77.45%	78.87%	77.86%

( ) Denotes contra

Northern Pacific Railway Company comparative income statement

	1958	1959	1960	1964
Railway operating income				
Railway operating revenue	$179,107,731	$183,608,782	$174,915,492	$184,300,791
Railway operating expenses	143,066,032	146,426,171	147,871,058	157,241,785
Net revenue from railway operations	36,041,699	37,182,611	27,044,434	27,059,006
Railway tax accruals	21,139,202	25,492,066	20,212,004	18,950,157
Railway operating income	14,902,497	11,690,545	6,832,430	8,108,849
Rent income[1]				
Rent from locomotives	253,114	254,430	227,471	246,989
Rent from passenger-train cars	957,507	913,552	1,084,861	929,124
Rent from work equipment	74,700	102,313	183,797	82,766
Joint facility rent income	4,365,869	4,546,122	4,645,780	4,604,960
Total rent income	5,651,190	5,816,417	6,181,909	6,629,479
Rents payable				
Hire of freight cars-debt balance	591,654	1,186,321	855,438	----------
Rent for locomotives	53,548	62,514	66,759	59,713
Rent for passenger-train cars	585,449	508,878	647,751	475,005
Rent for work equipment	1,432	3,015	5,718	6,219
Joint facility rents	1,096,285	1,177,716	1,283,133	1,317,928
Total rents payable	2,328,368	2,938,444	2,858,799	1,858,865
Net rents	3,322,822	2,877,973	3,283,110	4,770,614
Net railway operating income	18,225,319	14,568,518	10,115,540	12,879,463

See footnote at end of chart

Northern Pacific Railway Company comparative income statement—Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$45,964	$47,081	$46,693	$38,006
Miscellaneous rent income	1,371,432	1,489,083	1,386,611	1,688,651
Income from nonoperating property	5,722,257	9,115,847	8,404,803	8,668,651
Dividend income	6,603,231	6,356,530	6,986,559	6,400,843
Interest income	2,667,261	3,211,459	3,547,428	3,755,306
Income from sinking and other reserve funds	69,917	113,156	208,428	343,534
Miscellaneous income	1,192,201	1,380,301	932,096	2,237,273
Total other income	17,672,263	21,713,457	21,512,618	23,132,348
Total income	35,897,582	36,281,975	31,628,158	36,011,811
Miscellaneous deductions from income				
Miscellaneous rents	30,391	29,579	30,627	29,803
Miscellaneous tax accruals	661,702	711,481	683,912	885,873
Miscellaneous income charges	2,085,874	593,609	932,674	526,411
Total miscellaneous deductions	2,777,967	1,334,669	1,647,213	1,442,087
Income available for fixed charges	33,119,615	34,942,306	29,980,945	34,569,724
Fixed charges				
Rent for leased road and equipment	49,618	49,768	49,618	49,618
Interest on funded debt	10,924,586	11,009,193	11,256,439	10,877,100
Interest on unfunded debt	1,966	1,878	10,927	618
Amortization of discount on funded debt	131,469	105,302	116,767	141,731
Total fixed charges	11,107,639	11,166,141	11,433,751	11,069,067
Income after fixed charges	22,011,976	23,781,165	18,547,194	23,500,657
Operating ratio	79.87%	79.74%	84.54%	85.32%

[1]Income for 1964 also includes $774,640 for hire of freight cars.

Chicago, Burlington & Quincy Railroad Company comparative income statements

	1958	1959	1960	1964
Railway operating income				
Railway operating revenues	$258,027,700	$263,072,883	$251,135,890	$267,379,529
Railway operating expenses	200,263,598	209,875,069	203,951,532	217,258,619
Net revenue from railway operations	57,764,102	53,197,814	47,184,358	50,120,910
Railway tax accruals	27,403,280	27,339,438	25,178,072	21,204,576
Railway operating income	30,360,822	25,858,376	22,006,286	28,916,334
Rent income				
Rent from locomotives	177,810	139,111	93,316	27,187
Rent from passenger-train cars	1,451,453	1,368,610	1,423,519	1,592,412
Rent from work equipment	41,104	145,917	59,240	75,665
Joint facility rent income	779,659	828,502	867,468	889,040
Total rent income	2,450,026	2,482,140	2,443,543	2,584,304
Rents payable				
Hire of freight cars-debt balance	4,817,495	4,654,351	3,252,317	3,069,767
Rent for locomotives	84,980	(617)	4,640	80,245
Rent for passenger-train cars	1,039,396	1,061,073	1,118,395	1,098,093
Rent for work equipment	272	48	57	88
Joint facility rents	3,195,902	3,183,635	3,441,922	3,252,227
Total rents payable	9,138,045	8,898,490	7,817,331	7,500,420
Net rents	(6,688,019)	(6,416,350)	(5,373,788)	(4,916,116)
Net railway operating income	23,672,803	19,442,026	16,632,498	24,000,218

Chicago, Burlington & Quincy Railroad Company comparative income statements–Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$7,724	$6,757	$6,910	$7,710
Miscellaneous rent income	732,649	783,071	875,462	932,094
Income from nonoperating property	364,467	409,087	334,672	501,283
Separately operated properties	12,073	12,205	13,545	9,787
Dividend income	992,127	723,184	753,370	334,909
Interest income	793,075	1,290,237	1,238,197	1,886,357
Release of premiums on funded debt	21	21	20	23
Miscellaneous income	634,363	2,764,370	573,244	1,177,367
Total other income	3,536,502	5,939,476	3,795,620	4,919,359
Total income	27,209,305	25,431,502	20,428,313	28,919,577
Miscellaneous deduction from income				
Miscellaneous rents	31,072	29,446	33,210	30,377
Miscellaneous tax accruals	137,226	153,492	191,523	236,915
Separately operated properties-loss	----------	----------	----------	----------
Miscellaneous income charges	180,049	203,564	108,072	417,937
Total miscellaneous deductions	348,347	386,502	322,805	685,229
Income available for fixed charges	26,860,958	25,045,000	20,105,513	28,234,348
Fixed charges				
Rent for leased road and equipment	57,632	56,623	57,293	65,369
Interest on funded debt	7,247,259	7,223,783	7,484,585	7,492,327
Interest on unfunded debt	1,704	1,441	1,245	909
Amortization of discount on funded debt	62,631	62,010	69,252	47,345
Total fixed charges	7,369,226	7,348,857	7,612,375	7,606,543
Net income after fixed charges	19,491,732	17,696,143	12,493,138	21,367,845
Operating ratio	77.41%	78.99%	81.21%	81.23%

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines Inc.

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Assets								
	Current assets								
701	Cash	$1,000	$7,758,963	$10,484,365	$79,344	$18,304,672			$18,304,672
702	Temporary cash investments		51,348,274	19,960,332		71,308,926			71,308,926
703	Special deposits		259,753	9,304,306		9,564,059			9,564,059
704	Loans and notes receivable			945,290		945,290			945,290
705	Traffic and car service balances—debit		2,575,829	3,972,363	18,340	6,566,532			6,566,532
706	Net balance receivable from agents and conductors		2,759,344	8,221,812	97,327	11,078,483			11,078,483
707	Miscellaneous accounts receivable		5,475,121	2,309,322		7,784,443			7,784,443
708	Interest and dividends receivable		7,382,817	3,339,250	180,177	10,902,244			10,902,244
709	Accrued accounts receivable		11,300,708	216,557	5	11,517,270			11,517,270
710	Working fund advances		419,465	181,775		601,240			601,240
711	Prepayments		347	22,749,734	24,469	22,774,550			22,774,550
712	Material and supplies		21,850,824	184,609	133	22,035,566			22,035,566
713	Other current assets		297,559			297,559			297,559
	Total current assets	1,000	107,284,439	78,910,377	380,591	186,576,407			186,576,407
	Special funds								
715	Sinking funds		7,971,791	1,104,515		9,076,306			9,076,306
716	Capital and other reserve funds		1,165,925	1,969,943		3,135,868			3,135,868
717	Insurance and other funds			200,232		200,232			200,232
	Total special funds		9,137,716	3,274,690		12,412,406			12,412,406
	Investments								
721	Investments in affiliated companies		169,421,080	173,966,121		343,387,201	B	(1,031,000)	342,356,201
722	Other investments		4,082,140	267,734		4,349,874			4,349,874
723	Reserve for adjustment of investment in securities—credit			8,315,333		8,315,333			8,315,333
	Total investments		173,503,168	170,313,488		343,816,656		(1,031,000)	342,785,656
	Properties								
731	Road and equipment property		575,539,824	987,220,436	2,572,814	1,565,333,074			1,565,333,074
734	Improvements on leased property		1,384,377	321,308		1,705,685			1,705,685

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.,	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Assets								
	Properties—Con.								
733	Acquisition adjustment		$(3,649,455)	$(5,613,203)		$(9,262,658)			$(9,262,658)
734	Donations and grants - credit		8,863,493	5,675,257	78,676	14,617,426			14,617,426
	Total transportation property		865,380,023	876,253,936	2,753,938	1,744,387,897			1,744,387,897
735	Accrued depreciation—road and equipment		(136,583,989)	(173,043,737)	(173,943)	(309,801,669)			(309,801,669)
736	Amortization of defense projects—road and equipment		(36,029,799)	(46,327,267)		(82,357,066)			(82,357,066)
	Recorded depreciation and amortization		(172,613,788)	(219,371,004)	(173,943)	(392,158,735)			(392,158,735)
	Total transportation property less recorded depreciation and amortization		692,766,235	656,882,932	2,579,995	1,352,229,162			1,352,229,162
737	Miscellaneous physical property		23,701,978	13,077,245	881,566	37,660,789			37,660,789
738	Accrued depreciation—miscellaneous physical property		(3,214,018)	(129,759)		(3,343,777)			(3,343,777)
	Miscellaneous physical property less recorded depreciation		20,487,960	12,947,486	881,566	34,317,012			34,317,012
	Total properties less recorded depreciation and mortization		713,254,195	669,830,418	3,461,561	1,386,546,174			1,386,546,174
	Other assets and deferred charges								
741	Other assets		914,400	3,450,969		4,365,369			4,365,369
742	Unamortized discount on long-term debt		1,267,345	2,235,713		3,503,058			3,503,058
743	Other deferred charges		2,072,418	3,244,170	8,346	5,324,934			5,324,934
	Total other assets and deferred charges		4,254,163	8,930,872	8,346	13,193,381			13,193,381
	TOTAL ASSETS	1,000	1,007,433,679	929,261,623	3,350,798	1,940,547,100		(2,010,358)	1,938,536,742
	Liabilities and shareholders' equity								
	Current liabilities								
752	Traffic and car services balance credit				79,358	79,358	C	(79,358)	
753	Audited accounts and wages payable		7,218,476	6,567,378	31,541	13,817,395			13,817,395
754	Miscellaneous accounts payable		1,808,909	6,090,932	4,622	7,904,463			7,904,463
755	Interest matured unpaid		316,578	413,592		730,470			730,470
756	Dividends matured unpaid		37,275	4,602,070		4,639,345			4,639,345
757	Unmatured interest accrued		2,291,563	1,312,434		3,603,997			3,603,997
758	Unmatured dividends declared								
759	Accrued accounts payable		9,695,329	10,927,564	28,536	20,651,729			20,651,729
760	Federal income taxes accrued		3,838,489	2,957,698	4,325	6,800,512			6,800,512
761	Other taxes accrued		6,795,315	8,353,900	59,716	15,208,931			15,208,931
763	Other current liabilities		1,822,766	3,116,598	8,793	4,948,457			4,948,457
	Total current liabilities		33,824,703	44,343,266	218,891	78,384,860		(79,358)	78,305,502

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations		After adjustments and eliminations
							Notes	Amount	
	Liabilities and shareholders' equity—Con.								
	Long-term debt due within one year								
764	Equipment obligations and other debt		$11,557,960	$7,926,594		$19,484,554			$19,484,554
	Held by or for company								
	Actually outstanding		11,557,960	7,926,594		19,484,554			19,484,554
	Long-term debt due after one year								
765	Funded debt unmatured		288,882,857	178,673,176		467,556,033			467,556,033
	Held by or for company		(80,608,000)			(80,608,000)			(80,608,000)
	Actually outstanding		208,274,857	178,673,176		386,948,033			386,948,033
766	Equipment obligations		79,961,750	58,143,636		138,105,386			138,105,386
	Held by or for company								
	Actually outstanding		79,961,750	58,143,636		138,105,386			138,105,386
	Total funded debt and equipment obligations outstanding		288,236,607	236,816,812	230,000	525,053,419			525,053,419
769	Amounts payable to affiliated companies				230,000	230,000	D	(230,000)	
	Total long-term debt due after one year		288,236,607	236,816,812	230,000	525,283,419		(230,000)	525,053,419
	Reserves								
771	Pension and welfare reserves		10,014,200			10,014,200			10,014,200
772	Insurance reserves		925,114	1,915,634		2,840,748			2,840,748
773	Equalization reserves			(912,000)		(912,000)			(912,000)
774	Casualty and other reserves		267,500	2,518,166		2,785,666			2,785,666
	Total reserves		11,206,814	3,521,800		14,728,614			14,728,614
	Other liabilities and deferred credits								
782	Other liabilities		270,996	505,338	28,426	804,760			804,760
783	Unamortized premium on long-term debt								
784	Other deferred credits		1,089,901	1,251,808	351,224	2,692,933			2,692,933
785	Accrued depreciation—leased property		296,775	104,585		401,360			401,360
	Total other liabilities and deferred credits		1,657,672	1,861,731	379,650	3,899,053			3,899,053
	Shareholder's equity								
791	Capital stock:								
	Capital stock issued						E	491,530,014	491,530,014
	Proposed new issue						E	30,365,680	30,365,680
	Common stock (12,066,819 shares-without par value)								
	Preferred stock (3,036,565 shares-$10 par value)								
	Total							521,895,694	521,895,694

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations		After adjustments and eliminations
							Notes	Amount	
	Shareholders' equity—Con.								
791	Merging companies								
	Common stock	$1,000	$29,978,000	$274,026,150	1,000,000	$305,007,150	------	(305,007,150)	----------
	Held by or for company	----------	(9,505)	(6,131,436)	----------	(6,140,941)	------	6,140,941	----------
	Total	1,000	29,968,495	267,896,714	1,000,000	298,866,209	F	(298,866,209)	----------
	Total capital stock	1,000	29,968,495	267,896,714	1,000,000	298,866,209	------	223,029,485	$521,895,694
	Capital surplus:								
794	Premiums and assessments on capital stock	----------	224,031,121	----------	----------	224,031,121	F	(224,031,121)	----------
795	Paid-in surplus	----------	2,471	1,237,130	----------	1,239,601	------	----------	1,239,601
796	Other capital surplus	----------	38,371,506	639,996	18,794	39,030,296	G	(699,364)	38,330,932
	Total capital surplus	----------	262,405,098	1,877,126	18,794	264,301,018	------	(224,730,485)	39,570,533
	Retained income:								
797	Retained income—appropriated	----------	----------	----------	----------	----------	------	----------	----------
798	Retained income—unappropriated	----------	368,576,330	365,017,580	2,006,463	735,599,373	------	----------	735,599,373
	Total retained income	----------	368,576,330	365,017,580	2,006,463	735,599,373	------	----------	735,599,373
	Total shareholders' equity	1,000	660,949,923	634,791,420	3,024,257	1,298,766,600	H	(1,701,000)	1,297,065,600
	Total liabilities and shareholders' equity	1,000	1,007,433,679	929,261,623	3,850,796	1,940,847,100	------	(2,010,358)	1,938,536,742

() Denotes contra

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to Northern Lines merger

Note

I. The combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the sum of the amounts carried and the balance sheets of the four companies as of August 31, 1961, adjusted to give effect to the merger as shown by notes below:

A. To effect net debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Pacific Coast (See Note C). $79,358

B. To eliminate book investment in affiliates as follows:

Name of affiliate common stock	*Amount*	*Held by*
Pacific Coast	$1,700,000	Great Northern
G.N.P. & B. Lines, Inc.	500	Great Northern
G.N.P. & B. Lines, Inc.	500	Northern Pacific
Investment advances		
Pacific Coast	230,000	Great Northern
	$1,931,000	

C. To transfer to current assets credit balance in traffic and car service balances—credit (See Note A). 79,358

D. To eliminate investment advance payable to Great Northern by Pacific Coast 230,000

E. To set up capitalization of New Company at time of merger equal to the sum of the stated value of the capital stock of the Great Northern ($267,861,424) and the par value ($29,967,705) plus premium ($224,027,213) of the Northern Pacific outstanding in the hands of the public:

	Number of shares	*Amount*
Northern Pacific		
$5 par value $29,968,420	$5,993,684	$253,998,980
Great Northern		
without par value	6,073,135	267,896,714
	12,066,819	521,895,694
Less preferred stock—$10 par value:		
Great Northern		
6,073,135 shares @ ½ share	3,036,568	30,365,680
Total common stock capitalization	12,066,819	491,530,014
F. To eliminate capitalization of merged companies:		
Common stock actually outstanding		298,866,209
Premium on capital stock		224,031,121

Note	*Amount*
Common stock—without par value:	
G. The $699,364 reflects adjustment giving effect to the merger of the respective roads as follows:	
(1) Difference between book investment by Great Northern and par value of Pacific Coast Stock liability	par value 700,000
(2) Retirement and cancellation of fifteen (15) Northern Pacific shares of common stock held by directors as qualifying shares:	
15 shares @ $5 par value $75	
15 shares @ $37.38 premium $561	
Charged to other capital surplus	699,364
H. The debit adjustment or reduction in shareholder's equity of $1,701,000 is made up as follows:	
(1) Pacific Coast par value stock held by Great Northern	1,000,000
(2) Difference between book investment by Great Northern and par value of Pacific Coast stock liability	700,000
(3) Cancellation and retirement of 200 shares of New Company common stock upon effectuation of merger	1,000
	$1,701,000

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company

		G.N.P. & B. Lines, Inc.			Burlington			Net combined			After adjustments and eliminations
		General balance sheet	Adjustments and eliminations Notes	Amount	General balance sheet	Adjustments and eliminations Notes	Amount		Adjustments and eliminations Notes	Amount	
	Assets										
	Current assets										
701	Cash	$18,304,473	A	$(89,394,100)	$21,191,781	F	$70,000,000	$20,102,154	-----	----------	$20,102,154
702	Temporary cash investments	71,306,826	-----	----------	11,248,859	-----	----------	82,557,685	-----	----------	82,557,685
703	Special deposits	6,262,789	-----	----------	311,948	-----	----------	6,574,737	-----	----------	6,574,737
704	Loans and notes receivable	----------	-----	----------	1,670	-----	----------	1,670	-----	----------	1,670
705	Traffic and car service balances--debit	3,244,860	-----	----------	----------	-----	----------	3,244,860	H	$(2,347,826)	897,034
706	Net balances receivable from agents and conductors	6,750,049	-----	----------	4,793,177	-----	----------	11,543,226	-----	----------	11,543,226
707	Miscellaneous accounts receivable	11,797,260	-----	----------	7,213,440	-----	----------	19,010,700	-----	----------	19,010,700
708	Interest and dividends receivable	4,295,349	-----	----------	125,275	-----	----------	4,420,624	-----	----------	4,420,624
709	Accrued accounts receivable	16,500,163	-----	----------	7,743,402	-----	----------	24,243,565	-----	----------	24,243,565
710	Working fund advances	633,330	-----	----------	133,850	-----	----------	767,180	-----	----------	767,180
711	Prepayments	162,622	-----	----------	255,392	-----	----------	418,014	-----	----------	418,014
712	Material and supplies	44,755,227	-----	----------	18,565,480	-----	----------	63,320,707	-----	----------	63,320,707
713	Other current assets	462,401	-----	----------	322,741	-----	----------	785,142	-----	----------	785,142
	Total current assets	184,477,349	-----	(89,394,100)	71,907,015	-----	70,000,000	236,990,264	-----	(2,347,826)	234,642,438
	Special funds										
715	Sinking funds	----------	-----	----------	1,732	-----	----------	1,732	-----	----------	1,732
716	Capital and other reserve funds	9,076,606	-----	----------	5,129,697	-----	----------	14,206,303	-----	----------	14,206,303
717	Insurance and other funds	3,155,570	-----	----------	1,705,613	-----	----------	4,861,183	-----	----------	4,861,183
	Total special funds	12,232,176	-----	----------	6,837,042	-----	----------	19,069,218	-----	----------	19,069,218
	Investments										
721	Investments in affiliated companies	343,356,141	B	70,000,000	42,228,365	-----	----------	455,584,506	I	(288,890,031)	166,694,475
722	Other investments	5,049,874	-----	----------	14,003,459	-----	----------	19,053,333	-----	----------	19,053,333
723	Reserve for adjustment of investment in securities--credit	6,318,353	-----	----------	----------	-----	----------	6,318,353	-----	----------	6,318,353
	Total investments	342,087,662	-----	70,000,000	56,231,824	-----	----------	468,319,486	-----	(288,890,031)	179,429,455

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington			Net combined			After adjustments and eliminations
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations			Adjustments and eliminations		
			Notes	Amount		Notes	Amount		Notes	Amount	
	Assets—Continued										
	Properties										
T31	Road and equipment property	$1,765,891,996	------	----------	$974,108,243	-----	----------	$2,740,000,239	-----	----------	$2,740,000,239
T32	Improvements on leased property	2,376,015	------	----------	1,119,412	-----	----------	3,495,427	-----	----------	3,495,427
T33	Acquisition adjustment	(9,262,688)	------	----------	(101,904)	-----	----------	(9,364,592)	-----	----------	(9,364,592)
T34	Donations and grants—credit	14,817,436	------	----------	29,432,617	-----	----------	44,250,043	-----	----------	44,250,043
	Total transportation property	1,744,367,897	------	----------	945,493,134	-----	----------	2,689,881,031	-----	----------	2,689,881,031
T35	Accrued depreciation—road and equipment	(309,801,669)	------	----------	(223,616,273)	-----	----------	(533,417,942)	-----	----------	(533,417,942)
T36	Amortization of defense projects—road and equipment	(82,357,066)	------	----------	(35,745,899)	-----	----------	(118,102,965)	-----	----------	(118,102,965)
	Recorded depreciation and amortization	(392,158,735)	------	----------	(259,362,172)	-----	----------	(651,520,907)	-----	----------	(651,520,907)
	Total transportation property less recorded depreciation and amortization	1,352,209,162	------	----------	686,130,962	-----	----------	2,038,360,124	-----	----------	2,038,360,124
T37	Miscellaneous physical property	37,660,789	------	----------	10,128,451	-----	----------	47,789,240	-----	----------	47,789,240
T38	Accrued depreciation—miscellaneous physical property	(3,343,777)	------	----------	----------	-----	----------	(3,343,777)	-----	----------	(3,343,777)
	Miscellaneous physical property less recorded depreciation	34,317,012	------	----------	10,128,451	-----	----------	44,445,463	-----	----------	44,445,463
	Total properties less recorded depreciation and amortization	1,386,526,174	------	----------	696,259,413	-----	----------	2,082,805,587	-----	----------	2,082,805,587
	Other assets and deferred charges										
T41	Other assets	4,665,389	------	----------	560,508	-----	----------	5,225,897	-----	----------	5,225,897
T42	Unamortized discount on long-term debt	3,503,058	------	----------	602,490	-----	----------	4,105,548	-----	----------	4,105,548
T43	Other deferred charges	5,324,934	------	----------	4,368,848	-----	----------	9,693,782	-----	----------	9,693,782
	Total other assets and deferred charges	13,193,381	------	----------	5,531,846	-----	----------	19,025,227	-----	----------	19,025,227
	Total assets	1,938,336,742	------	$(19,384,100)	827,067,140	-----	$70,000,000	2,826,209,782	------	$(291,237,857)	2,534,971,925

○ Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington						
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations		Net combined	Adjustments and eliminations		After adjustments and eliminations
			Notes	Amount		Notes	Amount		Notes	Amount	
	Liabilities and shareholders' equity										
	Current liabilities										
752	Traffic and car service balances—credit				$2,347,826			$2,347,826	J	$(2,347,826)	
753	Audited accounts and wages payable	$13,817,695			6,540,264			20,357,959			$20,357,959
754	Miscellaneous accounts payable	730,470			3,303,724			11,208,157			11,208,157
755	Interest matured unpaid	4,639,348			319,461			1,049,931			1,049,931
756	Dividends matured unpaid	3,603,997						4,639,348			4,639,348
757	Unmatured interest accrued				802,573			4,406,570			4,406,570
758	Unmatured dividends declared	20,651,729			11,981,328			32,633,057			32,633,057
759	Accrued accounts payable	6,500,512	C	$(916,812)	2,809,279			8,692,979			8,692,979
760	Federal income taxes accrued	15,208,931			9,901,288			25,110,219			25,110,219
761	Other taxes accrued	4,945,457			5,044,392			9,992,849			9,992,849
763	Other current liabilities										
	Total current liabilities	75,305,502		(916,812)	43,050,435			120,439,125		(2,347,826)	118,091,299
	Long-term debt due within 1 year										
764	Equipment obligations and other debt	19,484,554			14,582,487			34,067,041			34,067,041
	Held by or for company				(1,333,825)			(1,333,825)			(1,333,825)
	Actually outstanding	19,484,554			13,248,662			32,733,216			32,733,216
	Long-term debt due after 1 year										
765	Funded debt unmatured	467,556,033	D	(17,631,000)	158,177,885	G	$40,131,000	648,233,918			648,233,918
	Held by or for company	(80,608,000)			(30,726,178)	G	29,869,000	(81,465,178)	K	(70,000,000)	(151,465,178)
	Actually outstanding	386,948,033		(17,631,000)	127,451,710		70,000,000	566,768,743		(70,000,000)	496,768,743

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington						
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations		Net combined	Adjustments and eliminations		After adjustments and eliminations
			Notes	Amount		Notes	Amount		Notes	Amount	
	Long-term debt due after 1 year—Continued										
766	Equipment obligations	$138,105,386	-----	----------	$81,627,232	-----	----------	$219,732,618	-----	----------	$219,732,618
	Held by or for company	----------	-----	----------	(30,000)	-----	----------	(30,000)	-----	----------	(30,000)
	Actually outstanding	138,105,386	-----	----------	81,627,232	-----	----------	219,732,618	-----	----------	219,732,618
	Total funded debt and equipment obligations outstanding	525,053,419	-----	(17,631,000)	209,078,942	-----	70,000,000	786,501,361	-----	(70,000,000)	716,501,361
769	Amounts payable to affiliated companies	----------	-----	----------	575,602	-----	----------	575,602	L	(398,602)	177,000
	Total long-term debt due after 1 year	525,053,419	-----	(17,631,000)	209,654,544	-----	70,000,000	787,076,963	-----	(70,398,602)	716,678,361
	Reserves										
771	Pension and welfare reserves	10,014,200	-----	----------	----------	-----	----------	10,014,200	-----	----------	10,014,200
772	Insurance reserves	2,840,748	-----	----------	2,931,949	-----	----------	5,772,697	-----	----------	5,772,697
773	Equalization reserves	(912,000)	-----	----------	1,158,000	-----	----------	246,000	-----	----------	246,000
774	Casualty and other reserves	2,785,666	-----	----------	757,441	-----	----------	3,543,107	-----	----------	3,543,107
	Total reserves	14,728,614	-----	----------	4,847,390	-----	----------	19,576,004	-----	----------	19,576,004
	Other liabilities and deferred credits										
782	Other liabilities	804,760	-----	----------	639,527	-----	----------	1,444,287	-----	----------	1,444,287
783	Unamortized premium on long-term debt	----------	-----	----------	180	-----	----------	180	-----	----------	180
784	Other deferred credits	2,692,933	-----	----------	518,994	-----	----------	3,211,927	-----	----------	3,211,927
785	Accrued depreciation—leased property	401,360	-----	----------	220,440	-----	----------	621,800	-----	----------	621,800
	Total other liabilities and deferred credits	3,899,053	-----	----------	1,379,141	-----	----------	5,278,194	-----	----------	5,278,194

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington			Net combined	Adjustments and eliminations		After adjustments and eliminations
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations					
			Notes	Amount		Notes	Amount		Notes	Amount	
	Shareholders' equity										
	Capital stock:										
T91	Capital stock issued										
	Proposed new issue										
	Common stock (12,222,936 shares—without par value)	$491,530,014	-----	----------	----------	-----	----------	$491,530,014	- M	$4,803,300	$496,333,314
	Preferred stock (3,036,568 shares—$10 par value)	30,365,680	-----	----------	----------	-----	----------	30,365,680	-----	----------	30,365,680
	Total	521,895,694	-----	----------	----------	-----	----------	521,895,694	-----	4,803,300	526,698,994
	Merging companies	----------	----	----------	$170,839,100	-----	----------	170,839,100	-----	(170,839,100)	----------
	Common stock	----------	----	----------	----------	-----	----------	----------	-----	----------	----------
	Held by or for company	----------	----	----------	----------	-----	----------	----------	-----	----------	----------
	Total	----------	-----	----------	170,839,100	-----	----------	170,839,100	-----	(170,839,100)	----------
	Total capital stock	521,895,694	-----	----------	170,839,100	-----	----------	692,734,794	-----	(166,035,800)	526,698,994
	Capital surplus:	----------	-----	----------	----------	-----	----------	----------	-----	----------	----------
T94	Premiums and assessments on capital stock	----------	-----	----------	----------	-----	----------	1,239,601	-----	----------	1,239,601
T95	Paid-in surplus	1,239,601	-----	----------	588,871	-----	----------	38,919,803	N	(38,919,803)	----------
T96	Other capital surplus	38,330,932	-----	----------	----------	-----	----------	----------	-----	----------	----------
	Total capital surplus	39,570,533	-----	----------	588,871	-----	----------	40,159,404	-----	(38,919,803)	1,239,601
	Retained income:	----------	-----	----------	48,025,460	-----	----------	48,025,460	-----	----------	48,025,460
T97	Retained income—appropriated	735,599,373	E	(846,288)	345,433,537	-----	----------	1,080,186,622	N	(13,535,826)	1,066,650,796
T98	Retained income—unappropriated	----------	-----	----------	----------	-----	----------	----------	-----	----------	----------
	Total retained income	735,599,373	-----	(846,288)	393,458,997	-----	----------	1,128,212,082	-----	(13,535,826)	1,114,676,256
	Total shareholders' equity	1,297,065,600	-----	(846,288)	564,886,968	-----	----------	1,861,106,280	O	(218,491,429)	1,642,614,851
	Total liabilities and shareholders' equity	1,935,536,742	-----	(19,394,100)	837,067,140	-----	$70,000,000	2,826,209,782	-----	(291,237,857)	2,534,971,925

( ) Denotes contra

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to the Northern Lines merger and the Burlington merger

Note

I. The final combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the amounts shown in pro forma general balance sheet, giving effect to the merger of the Northern Pacific, Great Northern and Pacific Coast into New Company, and the Burlington, as of August 31, 1961, adjusted to give effect to the merger as shown by notes below:

A. (1) To purchase new Burlington first and refunding mortgage series of 2010 4 percent bonds to be pledged under the New Company's consolidated mortgage	$70,000,000
(2) To deposit with trustee of Northern Pacific refunding and improvement mortgage sufficient funds to redeem at a redemption price of 110 the $17,631,000 par value outstanding refunding and improvement mortgage series "A" 4½ percent	19,394,100
	89,394,100
B. To reflect investment in $70 million Burlington first and refunding mortgage bonds.	
C. To reflect reduction in Federal income tax liability applicable to premium paid upon the redemption of Northern Pacific refunding and improvement mortgage series "A" 4½ percent bonds. (See Note E).	916,812
D. To eliminate Northern Pacific refunding and improvement mortgage series "A" bonds called and redeemed	17,631,000

Note II—Continued

E. To reflect charge to retained income—unappropriated as a result of net premium costs ($1,763,100 less Federal income tax reduction of $916,812) incurred in redemption of Northern Pacific refunding and improvement mortgage series "A" 4½ percent bonds. (See Note C). $846,288

F. To reflect receipt of cash by Burlington from sale of $70 million Burlington first and refunding mortgage bonds to the New Company.

G. To reflect issuance by Burlington of $70 million new first and refunding mortgage 4 percent bonds and cancellation of $29,869,000 Burlington first and refunding mortgage bonds ($19,729,000 4 percent series 1998 and $10,140,000 4½ percent series 1970) held in treasury.

H. To effect new debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Burlington. (See Note J). 2,347,826

I. To eliminate book investment of new company, in Burlington as follows:

	Amount
Common stock	$218,491,429
Other secured obligations	398,602
Burlington first and refunding mortgage bonds	70,000,000
Total	288,890,031

J. To transfer to current assets credit balance in traffic and car service balances-credit. (See Note H). 2,347,826

K. To reflect the elimination of the New Company's liability with respect to Burlington first and refunding mortgage bonds upon concurrent pledging of same under the new consolidated mortgage. 70,000,000

L. To eliminate amount payable to Burlington to New Company (See Note I). 398,602

M. To set up capital stock liability equal to par value of Burlington common stock outstanding in the hands of minority stockholders:

Common stock—without par value	*Shares*	*Amount*
48,033 shares @ 3.25	156,107	$4,803,300

Note II—Continued

N. Giving effect to the merger of the respective roads, results in adjustments representing:	
(1) Differences between book investment of New Company and par value of Burlington common stock liability ($218,491,429 less $166,035,800)	52,455,629
The $52,455,629 has been debited to other capital surplus, to the extent available	38,919,803
And the balance has been charged to retained income—unappropriated	13,535,826
	52,455,629
O. The net debit adjustment or reduction in stockholders' equity of $218,491,429 is made up as follows:	
(1) Elimination of Burlington common stock held by New Company.	166,035,800
(2) Difference between book investment of New Company and par value of Burlington common stock liability	52,455,629
	219,491,429

Note III

III. A total of 112,150 shares of common stock and 56,075 shares of preferred stock has been reserved for issuance against warrants outstanding under Great Northern's Restricted Stock Option Plan, and a total of 100,077 shares of common stock has been reserved for issuance against options outstanding under Northern Pacific's Restricted Stock Option Plan.

IV. See notes to financial statements of individual companies.

V. Long-term debt is as follows: (Note 1).

(a) Northern Pacific (Note 2).

Due within one year:

Collateral Trust Bonds 4 percent	$1,300,000	
Miscellaneous obligations	50,853	
Equipment obligations	10,207.107	
Total		$11,557,960

Note V—Continued

Due after one year:

Prior lien mortgage	$96,195,300	
General lien mortgage	53,585,900	
St. Paul-Duluth Division mortgage	253,000	
St. P. & Dul. R.R. First Cons. Mortgage	1,000,000	
Collateral Trust Bonds 4 percent	39,376,000	
Miscellaneous obligations	233,657	
Equipment obligations	79,961,750	
Total		$270,605,607
Total Northern Pacific debt		282,163,567

(b) Great Northern:

Due within 1 year:

Miscellaneous obligations	10,276	
Equipment obligations	7,916,318	
Total		7,926,594

Due after 1 year:

G.N.Ry. Co. Genl. Mtge. 5 percent Gold Bonds Ser. C.	14,154,900	
G.N.Ry. Co. Genl. Mtge. 4½ percent Gold Bonds Ser. D.	14,508,000	
G.N.Ry. Co. Genl. Mtge. 3¼ percent Gold Bonds Ser. N.	37,500,000	
G.N.Ry. Co. Genl. Mtge. 3⅛ percent Gold Bonds Ser. O.	37,500,000	
G.N.Ry. Co. Genl. Mtge. 2¾ percent Gold Bonds Ser. P.	40,000,000	
G.N.Ry. Co. Genl. Mtge. 2⅝ percent Gold Bonds Ser. Q.	35,000,000	
Miscellaneous obligations	10,276	
Equipment obligations	58,143,636	
Total		236,816,812
Total Great Northern debt		244,743,406

(c) Burlington (Note 3.)

Due within 1 year:

First and refunding mortgage 3⅛ percent Series 1985	1,271,290	
Equipment obligations	11,977,372	
Total		13,248,662

Due after 1 year:

First and refunding mortgage 2⅞ percent 1970	45,230,000	
First and refunding mortgage 3⅛ percent Series 1985	38,681,710	

Note V—Continued

First and refunding mortgage 3 percent Series 1990	21,565,000	
First and refunding mortgage 4¾ percent Series 1978	21,975,000	
Equipment obligations	81,627,232	
Total		209,078,942
Total Burlington debt		222,327,604
Total Great Northern Pacific & Burlington Lines, Inc. (New Company) Long-term debt (Note 4)		749,234,577

Note 1. Does not include New Company consolidated mortgage bonds referred to in Note 2(***)

Note 2. Does not include the following:

$17,631,000	principal amount to N.P.Ry.Co.'s Refunding & Improvement Bonds Series "A". (*)
1,000	principal amount to N.P.Ry.Co.'s Refunding & Improvement Bonds Series "A".(**)
28,000	principal amount of N.P.Ry.Co.'s Prior Lien Mortgage Bonds.(**)
5,555,000	principal amount of N.P.Ry.Co.'s General Lien Mortgage Bonds. (**)
3,524,000	principal amount of N.P.Ry.Co.'s Collateral Trust Bonds. (**)
71,500,000	principal amount of N.P.Ry.Co.'s Refunding & Improvement Bonds Series "E". (***)

Note 3. Does not include the following mortgage bonds and equipment trust certificates heretofore reacquired and held in treasury:

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* Actually outstanding at date but which under plan of merger will be redeemed (see Note D of notes to pro forma general balance sheet).

** Heretofore reacquired and held in treasury.

*** Nominally issued and pledged under N.P.Ry.Co.'s collateral trust indenture; after merger under the plan of merger these bonds will be released from pledge and cancelled and $71,500,000 principal amount of New Company new consolidated mortgage bonds will be deposited and pledged in substitution therefor. (See Note 1).

Note V—Continued

19,729,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4 percent Series 1998.
279,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3⅛ percent Series 1970.
335,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3⅛ percent Series 1985.
10,140,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4½ percent Series 1970.
552,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3 percent Series 1990.
1,025,000	principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4⅜ percent Series 1978.
30,000	principal amount of C.B. & Q. R.R. Co.'s Equipment Trust Certificates 2⅝ percent Trusts of 1954.
70,000	principal amount of C.B. & Q. R.R. Co. First and Refunding Mortgage Bonds 4 percent Series 2010 to be concurrently pledged under the G.N.P.&B. Lines, Inc. Consolidated Mortgage (See Note K, page 12)

Note 4. Does not include amounts payable to affiliated companies of $177,000 payable by the Burlington to St. Louis and Kansas City Land Company.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations Notes	Adjustments and eliminations amount	After adjustments and eliminations
	Assets						
	Current assets						
701	Cash	$20,102,154	$1,664,156	$21,766,310	-----	----------	$21,766,310
702	Temporary cash investments	82,557,685	----------	82,557,685	-----	----------	82,557,685
703	Special deposits	6,574,737	19,389	6,594,126	-----	----------	6,594,126
704	Loans and notes receivable	1,670	----------	1,670	-----	----------	1,670
705	Traffic and car service balance - debit	897,034	----------	897,034	A	$(897,034)	----------
706	Net balances receivable from agents and conductors	11,543,226	350,165	11,893,391	-----	----------	11,893,391
707	Miscellaneous accounts receivable	19,010,700	2,408,170	21,418,870	-----	----------	21,418,870
708	Interest and dividends receivable	4,420,624	3,565	4,424,189	-----	----------	4,424,189
709	Accrued accounts receivable	24,243,565	2,021,134	26,264,699	-----	----------	26,264,699
710	Working fund advances	767,180	823	768,003	-----	----------	768,003
711	Prepayments	418,014	8,928	426,942	-----	----------	426,942
712	Material and supplies	63,320,707	2,696,931	66,017,638	-----	----------	66,017,638
713	Other current assets	785,142	130,606	915,748	-----	----------	915,748
	Total current assets	234,642,438	9,303,867	243,946,305	-----	(897,034)	243,049,271
	Special funds						
715	Sinking funds	1,732	----------	1,732	-----	----------	1,732
716	Capital and other reserve funds	14,206,303	121,116	14,327,419	-----	----------	14,327,419
717	Insurance and other funds	4,861,183	----------	4,861,183	-----	----------	4,861,183
	Total special funds	19,069,218	121,116	19,190,334			19,190,334

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Investments						
721	Investments in affiliated companies	$166,694,475	$39,695,423	$206,389,898			$206,389,898
722	Other investments	19,033,333	540,917	19,594,250			19,594,250
723	Reserve for adjustment of investment in securities - credit	6,318,353	8,929,360	15,247,713			15,247,713
	Total investments	179,429,455	31,306,980	210,736,435			210,736,435
	Properties						
731	Road and equipment property	2,740,000,239	128,918,610	2,868,918,849	B	(128,918,610)	2,740,000,239
732	Improvements on leased property	3,495,427	467,903	3,963,330	B	(467,903)	3,495,427
733	Acquisition adjustment	(9,364,592)		(9,364,592)			(9,364,592)
734	Donations and grants - credit	44,250,043	(11,897,318)	56,129,361	B	(11,879,318)	44,250,043
	Total transportation property	2,689,881,031	(117,507,195)	2,807,388,226		(117,507,195)	2,689,881,031
735	Accrued depreciation - Road and equipment	(533,417,942)	(21,338,532)	(554,756,474)	B	21,338,532	(533,417,942)
736	Amortization of defense projects - Road and equipment	(118,102,965)	(2,386,795)	(120,489,760)	B	2,386,795	(118,102,965)
	Recorded depreciation and amortization	(651,520,907)	(23,725,327)	(675,246,234)		23,725,327	(651,520,907)
	Total transportation property less recorded depreciation and amortization	2,038,360,124	93,781,868	2,132,141,992		(93,781,868)	2,038,360,124
737	Miscellaneous physical property	47,789,240	6,119,887	53,909,127	B	(6,119,887)	47,789,240
738	Accrued depreciation - miscellaneous physical property	(3,343,777)	(952,831)	(4,296,608)	B	952,831	(3,343,777)
	Miscellaneous physical property less recorded depreciation	44,445,463	(5,167,056)	49,612,519		(5,167,056)	44,445,463
	Total properties less recorded depreciation and amortization	2,082,805,587	(98,948,924)	2,181,754,511		(98,948,924)	2,082,805,587

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Other assets and deferred charges						
741	Other assets	$5,225,897	$187,137	$5,413,034	------	----------	$5,413,034
742	Unamortized discount on long-term debt	4,105,548	----------	4,105,548	------	----------	4,105,548
743	Other deferred charges	9,693,782	370,326	10,064,108	------	----------	10,064,108
	Total other assets and deferred charges	19,025,227	557,463	19,582,690	------	----------	19,582,690
	Total assets	2,534,971,925	140,238,350	2,675,210,275	------	(99,845,958)	2,575,364,317
	Liabilities and shareholders' equity						
	Current liabilities						
752	Traffic and car service balance - credit	----------	1,606,897	1,606,897	A	(897,034)	709,863
753	Audited accounts and wages payable	20,357,859)	1,099,552	21,457,411	------	----------	21,457,411
754	Miscellaneous accounts payable	11,208,187	380,687	11,588,874	------	----------	11,588,874
755	Interest matured unpaid	1,049,931	1,095,239	2,145,170	------	----------	2,145,170
756	Dividends matured unpaid	4,639,348	----------	4,639,348	------	----------	4,639,348
757	Unmatured interest accrued	4,406,870	54,570	4,461,440	------	----------	4,461,440
758	Unmatured dividends declared	----------	----------	----------	------	----------	----------
759	Accrued accounts payable	32,633,057	2,859,780	35,492,837	------	----------	35,492,837
760	Federal income taxes accrued	8,692,979	----------	8,692,979	------	----------	8,692,979
761	Other taxes accrued	25,110,219	1,133,645	26,243,864	------	----------	26,243,864
763	Other current liabilities	9,992,849	1,379,737	11,372,586	------	----------	11,372,586
	Total current liabilities	118,091,299	9,610,107	127,701,406	------	(897,034)	126,804,372
	Long-term debt due after 1 year						
764	Equipment obligations and other debt	34,067,041	1,055,967	35,123,008	B	(1,055,967)	34,067,041
	Held by or for company	(1,333,825)	----------	(1,333,825)	------	----------	(1,333,825)
	Actually outstanding	32,733,216	1,055,967	33,789,183	D	(1,055,967)	32,733,216

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Long-term debt due after 1 year						
765	Funded debt unmatured	$648,233,918	$54,710,000	$702,943,918	B	($54,710,000)	$648,233,918
	Held by or for company	(151,465,175)		(151,465,175)			(151,465,175)
	Actually outstanding	496,768,743	54,710,000	551,478,743		(54,710,000)	496,768,743
766	Equipment obligations	219,762,618	4,011,493	223,774,111	B	(4,011,493)	219,762,618
	Held by or for company	(30,000)		(30,000)			(30,000)
	Actually outstanding	219,732,618	4,011,493	223,744,111		(4,011,493)	219,732,618
	Total funded debt and equipment obligations outstanding	716,501,361	58,721,493	775,222,854		(58,721,493)	716,501,361
769	Amounts payable to affiliated companies	177,000		177,000	C	31,126,774	31,303,774
	Total long-term debt due after 1 year	716,678,361	58,721,493	775,399,854	D	(27,594,719)	747,805,135
	Reserves						
771	Pension and welfare reserves	10,014,200		10,014,200			10,014,200
772	Insurance reserves	5,772,697		5,772,697			5,772,697
773	Equalization reserves	246,000		246,000			246,000
774	Casualty and other reserves	3,543,107	144,446	3,687,553			3,687,553
	Total reserves	19,576,004	144,446	19,720,450			19,720,450
	Other liabilities and deferred credits						
782	Other liabilities	1,444,287	169,504	1,613,791			1,613,791
783	Unamortized premium on long-term debt	180		180			180
784	Other deferred credits	3,211,927	238,595	3,450,522			3,450,522
785	Accrued depreciation - leased property	621,800	23,939	645,739	B	(23,939)	621,800
	Total other liabilities and deferred credit	5,278,194	432,038	5,710,232		(23,939)	5,686,293

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Shareholders equity						
	Capital stock:						
791	Capital stock issued						
	Proposed new issue						
	Common stock (12,222,926 shares - without par value)	$496,333,314	----------	$496,333,314	-------	----------	$496,333,314
	Preferred stock (3,036,568 shares - $10 par value)	30,365,680	----------	30,365,680	-------	----------	30,365,680
	Total	526,698,994		526,698,994	-------	----------	526,698,994
	Merging companies:						
	Common stock	----------	$40,000,000	40,000,000	B	($40,000,000)	----------
	Held by or for company	----------	----------	----------	-------	----------	----------
	Total	----------	40,000,000	40,000,000		(40,000,000)	----------
	Total capital stock	526,698,994	40,000,000	40,000,000	-------	(40,000,000)	526,698,994
	Capital surplus:						
794	Premiums and assessments on capital stock	----------	----------	----------	-------	----------	----------
795	Paid-in surplus	1,239,601	5,700,000	6,939,601	B	(5,700,000)	1,239,601
796	Other capital surplus	----------	124,967	124,967	B	(124,967)	----------
	Total capital surplus	1,239,601	5,824,967	7,064,568		(5,824,967)	1,239,601
	Retained income:						
797	Retained income - appropriated	48,025,460	----------	48,025,460	-------	----------	48,025,460
798	Retained income - unappropriated	1,066,650,796	24,449,332	1,091,100,128	B	(24,449,332)	1,066,650,796
	Total retained income	1,114,676,256	24,449,332	1,139,125,588	-------	(24,449,332)	1,114,676,256
	Total shareholders' equity	1,642,614,851	70,274,299	1,712,889,299	-------	(170,274,299)	1,642,614,851
	Total liabilities and shareholders' equity	2,534,971,925	140,238,350	2,675,210,275	-------	(99,845,958)	2,575,364,317

Notes to Pro Forma General Balance Sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to lease of Spokane, Portland and Seattle Railway Company

A. Transfer debit balance in Traffic and car service balances—Dr. to Traffic and car service balances—Cr. as the net balance becomes a credit after recording SP&S accounts on books of the New Company.

B. Represents property investment accounts, depreciation reserves, funded debt, equipment obligations and shareholders' equity to remain in the SP&S accounts.

C. Represents net liability of the New Company to the SP&S for excess of assets over liabilities of the SP&S to be recorded in the accounts to the New Company, as follows:

	Debit	*Credit*
Current assets	$9,303,867	
Capital and other reserve funds	121,116	
Investments	31,306,890	
Other assets	187,137	
Other deferred charges	370,326	
Current liabilities		$9,610,107
Casualty and other reserves		144,446
Other liabilities		169,504
Other deferred credits		238,595
Net Liability of New Company to SP&S (note D) Account No. 769, amounts payable to affiliated companies		31,126,774
Total	$41,289,426	$41,289,426

D. The pro forma balance sheet as of August 31, 1961, after giving effect to the merger of the Great Northern, Northern Pacific, Burlington and Pacific Coast shows total long-term debt of $749,411,577. After giving effect to the lease of the SP&S the new figure is $780,538.351. The difference of $31,126,774 represents an intercompany indebtedness of the New Company to the SP&S as indicated under Note C above.

See Note V of the notes to the pro forma general balance sheet of the New Company as of August 31, 1961, covering long-term debt of that company in the hands of the public. The SP&S long-term debt outstanding in the hands of the public consists of equipment obligations amounting to $4,874,371. This amount does not include $54,710,000 SP&S first mortgage bonds owned by the New Company and $193,089 of SP&S equipment obligations owned to the New Company.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma retained income - unappropriated as of August 31, 1961 after giving effect to merger

	N.P. Ry. Co.	G.N. Ry. Co.	C.B.&Q. R.R. Co.	S.P.&S. Ry. Co.	Pacific Coast R.R. Co.	Combined	Adjustments and eliminations	After adjustment and elimination
Credit balance at beginning of year	$376,316,062	$368,867,061	$343,285,113	$24,509,062	$1,981,126	$1,114,958,424		$1,114,958,424
Credit (current year)								
Credit balance carried from income	8,866,676	8,726,982	8,379,729	(57,332)	15,234	25,933,489	($9,131,969) (a) 712,294 (b)	17,513,814
Other credits to retained income					9,103	9,103		9,103
Federal income taxes assigned to retained income (Net)		25,045	219,575			244,620		244,620
Total credits	385,182,938	377,621,088	351,884,417	24,451,730	2,005,463	1,141,145,636	(8,419,675)	1,132,725,961
Debits (current year)								
Loss on sale or retirement of property		25,950	4,162			30,112		30,112
Other debits to retained income	10,014,200	22,668	467,363	2,398		10,506,629	38,831,446 (c)	49,338,075
Appropriations released		(1,125,000)				(1,125,000)		(1,125,000)
Dividends	6,592,408	13,679,890	5,979,355			26,251,653	(5,811,253) (d)	20,440,400
Total debits	16,606,608	12,803,508	6,450,880	2,398		35,663,394	33,020,193	68,683,587
Credit balance as of August 31, 1961	368,576,330	365,017,580	345,433,537	24,449,332	2,005,463	1,105,482,242	(41,439,868)	1,064,042,374 (e)

(a) Burlington dividends accrued by Northern Pacific Railway Company and Great Northern Railway Company.

(b) Anticipated Federal income tax saving of $712,294 on Burlington dividends (Note (a)).

(c) Net premium on redemption of Northern Pacific Refunding and Improvement Mortgage Series "A" 4½ percent bonds $46,285
Cost of Burlington common stock in excess of its par value after application of other capital surplus to the extent available 13,535,626
Elimination of credit balance of retained income–unappropriated of the S.P.&S. Ry. Co. as of August 31, 1961 not recorded by the G.N.P.&B. Lines, Inc. under terms of lease of the S.P.&S. Ry. Co 24,449,332
38,831,446

(d) Burlington dividends accrued by Northern Pacific Railway Company and Great Northern Railway Company (Note (a)) 9,131,969
Deduct: Burlington dividend (3rd) not charged to retained income in that company's accounts at August 31, 1961 but accrued by Northern Pacific Railway Company and Great Northern Railway Company 3,320,716
5,811,253

(e) Credit balance as of August 31, 1961 as shown above 1,064,042,374
Deduct: Anticipated Federal income tax saving on Burlington dividends (Note (b)) 712,294
Add: Burlington's (3rd) dividend not charged in that company's accounts (Note (d)) 3,320,716
Credit balance as of August 31, 1961 as shown by Pro Forma General Balance Sheets, Pages 4 and 6 1,066,650,796

( ) Denotes contra

APPENDIX D

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478 [1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided November 30, 1967

Upon reconsideration and further hearing:

1. In Finance Docket No. 21478, (a) merger of the properties and franchises of the Great Northern Railway Company, the Northern Pacific Railway Company, the Pacific Coast R.R. Company and the Chicago, Burlington & Quincy Railroad Company into the Great Northern Pacific & Burlington Lines, Inc., for ownership, management and operation; (b) acquisition by the surviving company of sole or joint control of carriers subsidiary to or affiliated with the merging carriers, through stock ownership or otherwise, and of all leasehold,

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[1] This report embraces also Finance Docket No. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, Etc. and Finance Docket No. 21480. Great Northern Pacific & Burlington Lines, Inc., et al.—Construction and Abandonment.

trackage, joint use and joint ownership rights in the lines of railroad of other carriers, and the terminals incident thereto, held by the merging carriers; (c) lease by the surviving company of the lines of railroad and other properties owned, used, or operated by the Spokane, Portland & Seattle Railway Company for a period of 10 years and through the terms of such lease, acquisition by the lessee of sole or joint control of carriers subsidiary to or affiliated with the lessor and all leasehold, trackage, joint ownership and joint use rights in any railroad line or lines and terminals incidental thereto held by lessor, approved and authorized. Conditions prescribed. Findings in prior report 328 I.C.C. 460, reversed.

2. In Finance Docket No. 21479, authority granted (a) to Chicago, Burlington & Quincy Railroad Company to issue not exceeding $70 million principal amount of its first and refunding 4 percent bonds, due August 1, 2010; (b) to Great Northern Pacific & Burlington Lines, Inc., to issue not exceeding 17.5 million shares of common capital stock without par value, not exceeding 3,102,333 shares of preferred stock, of the par value of $10 each share and not exceeding $71.5 million principal amount series A consolidated mortgage 4 percent bonds, due October 1, 1984; (c) to Great Northern Pacific & Burlington Lines, Inc., to assume all obligations, liabilities and guarantees with respect to securities issued, assumed or guaranteed by the Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co., and the Chicago, Burlington & Quincy Railroad Company and companies subsidiary to or

affiliated therewith, including obligations contingently guaranteed by the foregoing either solely or jointly with other guarantors, and during the term of the lease of the Spokane, Portland & Seattle Railway Company and companies subsidiary to or affiliated therewith, to assume all obligations, liabilities and guarantees with respect to securities issued by the lessor companies, including obligations contingently guaranteed either solely or jointly with other guarantors; (d) to Great Northern Pacific & Burlington Lines, Inc., to pledge $71.5 million principal amount of its series A consolidated mortgage 4 percent bonds, due October 1, 1984; and (e) to Great Northern Pacific & Burlington Lines, Inc., to modify the status of the Northern Pacific Railway Company's collateral trust bonds through a supplemental indenture, all for the purposes set forth herein in connection with the merger, acquisitions of control and leases referred to above. Conditions prescribed. Application dismissed in all other respects.

3. In Finance Docket No. 21480, order issued authorizing the Great Northern Pacific & Burlington Lines, Inc., to abandon portions of lines of railroad in Wilkin and Clay Counties, Minn., Lewis and Clark County, Mont., and Spokane County, Wash., and by Spokane, Portland and Seattle Railway Company in Spokane County, Wash., and to construct connecting tracks in Douglas County, Wis., Pine, Stearns, Wadena, Wilkin, Clay, and Polk Counties, Minn., Cass, and Grand Forks Counties, N. Dak., Lewis and Clark County, Mont., Bonner County, Idaho, Spokane, Whitman and King County, Wash., Multnomah County, Oreg.

Appearances as shown in prior report, and in addition:

Lee B. McTurnan, for applicants.

Kenneth G. Bueche, Samuel R. Freeman, W. H. Parsons and *Ernest Porter*, for intervening rail carriers.

John H. Dougherty, Jack Pearce and *Edwin M. Zimmerman*, for United States Department of Justice, intervener in opposition.

Lou Boedecker, William J. Hickey, Douglas M. Head, William E. O'Leary and *Lloyd Wandtke*, for other interveners in opposition.

REPORT OF THE COMMISSION ON RECONSIDERATION AND FURTHER HEARING

BY THE COMMISSION:

The *prior report* in these proceedings, 328 I.C.C. 460, dated March 31, 1966, denied joint applications, filed February 17, 1961, by Great Northern Railway Company (Great Northern or GN) and Northern Pacific Railway Company (Northern Pacific or NP), both of St. Paul, Minn., hereinafter sometimes called the Northern Lines, and by Pacific Coast R. R. Co. (PC), of Seattle, Wash., Chicago, Burlington & Quincy Railroad Company (Burlington or CBQ), of Chicago, Ill., and Spokane, Portland and Seattle Railway Company (SP&S), of Portland, Oreg., all common carriers by railroad subject to part I of the Interstate Commerce Act, and Great Northern Pacific & Burlington Lines, Inc. (New Company or NuCo), a corporation of Wilmington, Del., not yet a carrier,

in which authority is sought for the merger of GN, NP, PC, and CBQ into NuCo, the lease by the latter of SP&S together with the acquisition of control of subsidiaries, issuances of common stock, assumptions of obligation and liability, abandonment and construction of lines and other authority related to and necessary for the effectuation of the mergers and lease.

The proposed transactions are described in the *prior report*, and in greater detail in the recommended report of the examiner, served August 24, 1964, after extensive public hearings before the examiner ending in July 1962. In recommending approval of the proposed unification, the examiner found that numerous benefits would flow by way of savings, efficiencies, economies and improved service, and that, suitably conditioned to protect carrier employees and connecting and competing railroads in the territory, applicants' proposal satisfies the statutory requirements. The Commission found in the *prior report*, however, that the disadvantages of unification, namely, a drastic lessening of competition and adverse effects on carrier employees, outweigh the benefits that might be derived therefrom by applicants and the shipping public, and accordingly, concluded that the proposed transactions would not be consistent with the public interest. The Commission found that there would be substantial hardship inflicted upon carrier employees through loss of jobs; and that with imposition of all of the conditions necessary to protect the traffic of

other railroads [2] particularly those for the Milwaukee and North Western, the benefits to be produced would be minimal and might preclude consummation. While no dollar figure could be placed upon the value of intramodal rail competition, the value thereof was found not negligible but worth at least $12.7 to $25.2 million in gross annual savings which would accrue to applicants from the merger.

Applicants, on July 27, 1966, requested reconsideration of the *prior report* on the grounds that they had reached agreements with various employee representatives, and were negotiating with others, for effecting merger-actuated work-force reductions through natural and normal attrition; that they had concluded agreements with Milwaukee and CNW respecting traffic diversion and were agreeable to all conditions found necessary in the *prior report* to protect the traffic of other railroads; and that even after considering the cost of labor and traffic conditions, the annual savings from their proposed unification would be substantially greater than estimated in the *prior report.*

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[2] Reference in this report to an intervening railroad will be by the distinctive portion of its corporate title as follows: Chicago, Milwaukee St. Paul & Pacific Railroad Company (Milwaukee), Chicago and North Western Railway Company (North Western or CNW), Chicago, Rock Island and Pacific Railroad Company (Rock Island), The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), Soo Line Railroad Company (Soo), The Western Pacific Railroad Company (Western Pacific or WP), Union Pacific Railroad Company (Union Pacific or UP), Southern Pacific Company (Southern Pacific or SP), and The Denver and Rio Grande Western Railroad Company (Rio Grande or DRGW).

A petition was simultaneously filed by Northern Pacific Stockholders' Protective Committee (NPSC), an intervener, seeking further hearings with respect to the justness and reasonableness of the terms and conditions of applicants' merger agreements, and a petition was subsequently filed by Rio Grande seeking an investigation into the agreements entered into by applicants with Milwaukee and North Western. Applicants replied to the latter petitions, and we received replies by numerous parties to applicants' petition.

After consideration of the foregoing petitions and replies, and other matters, on January 4, 1967, these proceedings were reopened by the Commission for reconsideration, oral argument, and limited further hearing. The order referred these matters to an examiner for hearing and outlined the procedures to be followed, but noted that due and timely execution of our functions imperatively and unavoidably required the omission of an examiner's report, and provided for certification of the record to us for initial decision. Although the order by its terms reopened the proceeding for reconsideration and oral argument on all issues, the further hearing was limited solely to determining, on the basis of the most current information readily available, the amount of estimated savings resulting from the proposed merger in the light of (1) agreements entered into between the applicants, on the one hand, and, on the other, the Milwaukee and the North Western and (2) the effect of relevant financial, operational and other changes related to savings, which have occurred subsequent to the close of hearings.

BACKGROUND

Briefly, by these applications there are proposed transactions through which New Company would ultimately achieve unified control, management and operation of the properties and franchises of the applicant railroads. A rail network would be created of almost 27,000 miles of track extending from the Great Lakes and the Mississippi River through the northern tier of Western States to the Pacific Northwest and California, and by affiliation [3] reaching the Gulf of Mexico. The rail lines of New Company would traverse 16 States and 2 Canadian Provinces.[4] New Company would control extensive motor carrier properties and operations, and its control, in whole or in part, would extend to numerous terminal, rail equipment, and other companies. Its holdings would include title in fee to more than 2.2 million acres of land and mineral rights in an additional 6 million acres. GN and NP's major transcontinental routes extend generally through the same northern tier States between the Twin Cities (St. Paul and Minneapolis, Minn.) and Head-of-Lakes (Duluth-Superior, Minn.), and

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[3] With The Colorado and Southern Railway Company (C&S) and Fort Worth and Denver Railway Company (FW &D), both controlled by Burlington.

[4] The States of California, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, Wisconsin, and Wyoming, and the Provinces of British Columbia and Manitoba. The lines of C&S and FW&D, in addition, traverse the States of New Mexico and Texas in forming a rail route between Denver, Colo., and Galveston, Tex.

the Pacific Northwest, with the lines of SP&S forming part of the through routes to and from West Coast terminals. The main lines of GN and NP are both parallel and complimentary in that the greater part of NP's mileage is in the western part of its system while most of GN's mileage is in its eastern portion. West of Minnesota, GN serves primarily those communities lying to the north while NP serves the southern parts of these States. Of the two, only GN serves southern Minnesota and the States of Iowa and South Dakota. Only GN reaches California.

Except at their eastern and western extremities, the areas served by the Northern Lines are characterized by an extremely light population density. The area served is extensive, over 1,700 miles in length and 900 miles in breadth, and is rich in animal, mineral, agricultural and forest resources, but offers a limited market for its products. For this reason, the producers in the area are heavily dependent upon transportation. Because of the nature of the products and the distances involved, rail transportation to centers of population at costs low enough to permit participation in these markets is of primary importance. There is an imbalance of traffic. The West has historically been a market for the finished products of the Midwest and the East, and a supplier to those areas of basic raw materials. The lower-rated traffic in its long haul east is not as vulnerable to incursions by intermodal competitors of the Northern Lines as the higher-rated manufactured articles moving into the area served by these lines for consumption. The latter, both from the East and from the

west coast, are vulnerable to motor carrier competitors and others, and it is this traffic which the rail carriers must retain to balance their operations.

The Northern Lines, as seen, largely serve the same eastern terminals and western ports as traditional competitors, and the traffic which they carry is similar in consist and in volume, differing only in areas where their lines are widely separated. There is no substantial competition, however, between either of the Northern Lines and the Burlington, since the latter's lines are in great part complementary to those of its parents, the Great Northern and Northern Pacific. Burlington's traffic differs, also, in that forest products comprise a much smaller proportion, and manufactures and miscellaneous traffic a much larger proportion, of its total traffic. Burlington's service area is more heavily populated than that of the Northern Lines, and constitutes an important market for producers located in the latter area. Burlington serves, among other points, the Twin Cities, Sioux City, Iowa, and Laurel, Mont., common points at which large volumes of traffic are interchanged with the Northern Lines. Burlington connects at Chicago, Peoria, Ill., and St. Louis, Mo., with other trunk and terminal lines serving large manufacturing centers which market their products in Northern Lines territory, and it serves many packinghouses in the Midwest at Chicago, St. Louis, Omaha, Nebr., Kansas City, Mo., and other points, which use the animal products grown in Northern Lines territory.

A combination of these and other factors has long convinced Northern Lines management that these railroads, together with CBQ, SP&S and PC, which they control,[5] should be unified under NuCo's direction and control. With an enlarged pool of rolling equipment of varied types and the means of coordinating that equipment more efficiently to serve the needs of the combined service area, with elimination of duplicative functions, facilities and personnel through attrition, and with routing, transit and other services more finely tuned to the needs of the shipping public, NuCo would be a more proficient railroad than the applicants separately. The whole, therefore, would in fact be greater (better) than the sum of the component parts. The stronger road, it is advanced, would be better able to cope with the increased intermodal competition from motor and water carriers, both regulated and unregulated, which has intensified as a result of constantly improved highways and waterways. Moreover, NuCo would be better able to adjust to and cope with seasonal and economic fluctuations in traffic, in one commodity or another in one area or another, and thus to maintain a better overall balance.

Active preparation for these proceedings commenced early in 1956 with the formation of a joint

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[5] SP&S, like Burlington, is jointly controlled by the Northern Lines. Located in Washington and Oregon, SP&S operates over 599.53 miles of track, principally between Portland and Spokane, Wash. Pacific Coast is controlled by Great Northern, and operates over 32.03 miles of track between Seattle and various points in Washington.

consolidation committee of directors of the Northern Lines, and with the employment in July 1956 of an independent transportation engineering firm, hereinafter called Wyer, to study and analyze operating and financial aspects of a unification of applicants' lines and to report on the operating advantages and monetary savings which could be realized therefrom. A detailed "Report on Economics of Proposed Consolidation" was completed by Wyer in December 1957, and was revised in November 1960 to reflect changes in cost and rate levels, physical facilities, and operating conditions as of July 1, 1960. The Wyer report embraced 20 separate studies of different aspects of unification, and included review and analysis of protective services, normalized maintenance, freight costs, and a waybill study. The Wyer report was described and analyzed in the examiner's report, and was reviewed in the *prior report.* It will be further discussed hereinafter, in the light of the evidence adduced at the further hearings. In substance, the Wyer report indicated numerous economies and efficiencies to be achieved through unification, and contained recommendations for improvements in service and the strengthening of applicants' transportation system through unification. On the basis of the Wyer report, the joint consolidation committee decided to proceed with plans for unification. Accordingly, in January 1961, the principals executed agreements under which New Company was formed and the terms and conditions of the proposed unification of the separate lines under New Company's control were formalized.

Further Hearing

The further hearings herein were relatively brief. Applicants' case-in-chief consumed 3 days of hearing in March, and all opposing parties completed their presentation in a single day in May. Following the latter evidence, applicants were permitted by the examiner, over objections raised by the city of Minneapolis and other opposing interveners, to present evidence in rebuttal, and to do so without first submitting such matter in advance in the form of a prepared statement, in the general manner prescribed for the parties in the January 4 order. Applicants' rebuttal related solely to matters contained in the prepared statements and oral testimony of witnesses immediately preceding.

The Commission's order of January 4 did not specifically provide for presentation of rebuttal by applicants; however, an applicant normally has the right to open and close hearings held on his application, and a trial officer may exercise wide discretion in the admission of rebuttal evidence. We do not find, in this instance, that there was an abuse of discretion. Interested parties were free to cross-examine as to the brief rebuttal evidence, and one did. The procedures adopted by the examiner were consistent with this authority, under our General Rules of Practice, to "regulate the procedure in the hearing before him," and no party was prejudiced thereby.

Applicants, on further hearing, updated their prior estimates of the savings expected to accrue from the

proposed unification. The updating was performed by Wyer from a joint report to Wyer made by designated vice presidents of GN and NP in which they described specific structural and operational changes which they deemed relevant to savings. To the extent considered significant, there was encompassed by their study those operational changes which had been recommended in the Wyer report as achievable through unification, but which the individual applicants had in fact effected by independent action. On the basis of this joint report, and in the light of known changes in applicants' costs and revenues, due consideration being given to the effects of the Milwaukee and North Western protective agreements and the labor attrition agreements previously mentioned, Wyer reviewed each of the basic studies of the Wyer report and prepared an updated estimate of the effect of the proposed unification on applicants' net income, before Federal income taxes, as of January 1, 1967, as shown in column 4 of the following table:

Estimated savings from unification per annum, before Federal income tax

	Study	Wyer 1960 revision	Examiner's** adjusted savings	Prior report adjusted savings	Savings estimated after further hearing
		1	2	3	4
I	(Common points)	$15,846,802	$15,846,802	$10,564,535	$17,893,000
II	(Duplicate lines)	3,059,838	0	0	0
III	(Lines retained-effect of consolidation on expenses)	2,486,579	1,940,899	1,940,899	2,305,000
IV	(Duplicated freight train service)	1,697,725	1,697,725	1,697,725	1,892,000
V	(Duplicate passenger train service St. Paul-Chicago)	490,856	490,856	490,856	526,000
VI	(Carload freight-shortest or most economical point routes)	3,630,910	3,630,910	3,630,910	4,052,000
VII	(Carload freight-longer hauls)	10,561,178	10,561,178	18,629,032	14,575,000
VIII	(Less carload freight-loading patterns)	455,888	432,836	432,836	428,000
IX	(Equipment pools)	3,343,697	3,208,130	3,208,130	3,241,000
X	(General repair facilities)	2,194,535	2,194,535	2,194,535	2,404,000
XI	(Materials and supplies stocks and purchases and stores organization)	1,366,319	1,366,319*	1,366,319*	1,475,000
XII	(Foreign lines freight charges on company material)	167,321	167,321	167,321	167,000
XIII	(Communication facilities)	460,114	460,114	460,114	512,000
XIV	(Train dispatchers)	330,809	330,809	330,809	379,000
XV	(Special agents)	124,463	124,463	124,463	151,000
XVI	(Dining car departments)	80,136	80,136	80,136	93,000
XVII	(System revenues)	(1,958,705)	(1,958,705)	(21,221,155)	(15,041,000)
XVIII	(System expenses)	10,586,135	10,586,135	10,586,135	12,887,000
XIX	(Labor contracts)	(885,360)	(885,360)	(885,360)	(1,130,000)
XX	(Taxes)	(4,639,766)	(4,639,766)	(4,639,766)	(5,083,000)
XXI	(Operating changes at Twin Cities and Head-of-Lakes, agreements applicants and N.W.)				(38,000)
	Total savings	49,399,474	45,635,337*	29,158,474*	41,688,000
	Contingency allowance	(6,174,934)	(5,704,417)	(3,644,809)	(2,015,000)
	Net savings	43,224,540	39,930,920	25,513,665*	39,673,000

( )—Denotes deficit amount. *—Denotes corrected amount. **—Examiner's report.

As seen in the table above, applicants' estimates show a reduction for contingencies. We did not find unreasonable in the *prior report* an allowance for this purpose of 12.5 percent. This reduction reflected the element of doubt attributable to such factors as the necessary Commission approval for proposed abandonments of duplicate lines, the difficulties in estimating the ultimate costs of labor protection in the absence of agreement with employees in regard to protective conditions, and the fallibility of human judgment in forecasting the reactions of shippers and the resulting shifts of traffic. The "mix" of these factors which made up the 12.5-percent allowance for contingencies has changed considerably since the 1960 estimates, however. Applicants' plans to abandon duplicate lines have themselves been abandoned,[6] at least for the present, and agreements reached with employee groups, and expected to be reached with other employee groups and employees, have made appraisals of the costs of labor protective conditions less hazardous.

Guided by our conclusions in the *prior report* with regard to probable traffic diversions to and from applicants' lines, applicants have, in the light of the subsequent Milwaukee and North Western agreements, been able to minimize the areas of doubt inherent in

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[6] In study II of the Wyer report, savings of more than $3 million were estimated to accrue from abandonment of 13 segments of parallel and duplicate lines aggregating almost 500 miles of track. No applications were filed for authority to effect these abandonments, however, and savings therefrom were not considered by the examiner, or in the *prior report*, and are not now reflected in applicants' estimates.

estimating shifts of traffic as a result of unification. In these circumstances, applicants have utilized an allowance for contingencies of 5 percent on operational factors and 20 percent on revenue factors. Accordingly, the net loss resulting from studies VII (gains in freight revenue) and XVII (losses in freight revenue) in column 4 of the table above was reduced by 20 percent, and the net gain produced by all of the other studies was reduced by 5 percent. An overall reduction in savings of slightly less than 5 percent will result.

Adjustments reflected in applicants' updated estimates of savings include: increases in employees' wages and health and welfare benefits, aggregating (to mid-1966) 5 percent for operating employees and 3.5 to 5 percent for nonoperating employees; an average increase of 4.8 percent (to October 1966) in the cost of materials and supplies; an increase (to June 1966) of 11.8 percent in payroll taxes; increases (to January 1967) ranging from 8.33 to 23.6 percent in per diem charges for freight cars; an increase of 10 percent (to January 1967) in the annual rents expected to be collected by NuCo from leased lands and structures; and an average increase of 7.5 percent in miscellaneous expenses. On the basis of the latest available traffic data (1965) the estimated gains in freight revenue (study VII) and estimated losses in freight revenue (study XVII) were revised and updated to January 1967 cost and revenue levels. Also reflected in applicants' estimates are increases in State and local taxes, and in the costs of protective conditions for employees whose jobs would be affected.

The cash expenditures by applicants required over a 5-year period to consummate the unification were revised downward, from $18,922,329 to $13,141,000, due in major part to the completion since 1960 of about 65 percent of applicants' centralized traffic control (C.T.C.) program at a cost of some $6.5 million. The revised estimate is predicated, however, on 1960 cost levels.

Applicants' updated estimate of savings makes allowance for operational changes since 1960 as reported to Wyer by the Northern Lines' vice presidents. This joint report indicated, in general, that applicants' less-than-carload freight traffic has declined substantially since 1960, that applicants' carload traffic, in gross ton-miles, has increased somewhat during this period, that the total number of applicants' employees and of the passenger cars in their fleets has declined and continues to steadily decline further, that various tracts of land slated to be acquired for improvement projects after unification have already been acquired, and that various reductions in and eliminations of rail services and facilities contemplated after unification have already been accomplished. The decline in the number of passenger cars has had the effect of making unnecessary the planned construction of additional car storage tracks at St. Paul. And the decline in less-than-carload traffic has made it inadvisable to proceed with plans to construct a consolidated freight house in the Twin Cities area. Also, land which was to have been acquired at Spokane, Wash., for the construction of a bridge, and at Vancouver, Wash., for expansion of a freight yard,

has already been acquired, and Great Northern's wheel shop at Spokane, which was to be abandoned already has been abandoned. In all, operational changes which reduce estimated savings aggregated $264,000, while those which increase estimated savings aggregated $499,000, resulting in a net increase of $235,000. This reflects, among other things, reduction in estimated savings stemming from a drop, since 1960, of more than $10 million in applicants' combined inventory of materials and supplies.

As seen, by far the largest item of estimated savings results from consolidation of operations at various common points (study I), a savings estimated at almost $17.9 million. The next largest savings, $14.5 million (study VII), is more than counter-balanced by its correlative outflow, $15 million (study XVII), for a net revenue loss of $466,000. A major savings, almost $12.9 million (study XVIII), is expected to result from unification of applicants' separate organizations at administrative, operational, maintenance, traffic, and other levels.

In all of the operational studies conducted, it is clear the greatest portion of the savings estimated is attributable to reductions in the number of jobs. Applicants' employees would now be protected under the attrition agreements, although duplicating and overlapping jobs after unification would be abolished over a 5-year period. It is basic to applicants' proposal that they would, after unification, provide the public with service the same as or even better than before, but with fewer employees than are required for separate operation of the involved railroads. In the Wyer report, as revised in 1960, it was determined after a

detailed study that 8,286 jobs, mostly in Minnesota (3,166 jobs) and Washington (2,072 jobs), would be abolished, whereas 3,114 new jobs, again mostly in the same two States, would be created. In sum, there would be a net reduction of 5,172 jobs attributable solely to the unification.

At the further hearing, Wyer estimated that only 4,511 jobs, or 661 fewer jobs, would be eliminated. Nonetheless, due to intervening increases in wages and benefits, the estimated savings from job abolishments was increased from $32,676,759 in 1960 to $36,350,000 in 1967. Savings attributable to job abolishments are therefore estimated by applicants to be $3.76 million greater than at the time of the *prior report*, notwithstanding the attrition agreements entered into.

Inasmuch as most of the estimated savings relate to labor costs, the evidence adduced by opposing parties at the further hearing largely concerned applicants' estimates of savings through job abolishments, and in particular the methods employed by Wyer in developing these estimates. United States Department of Justice (Justice) and the State of Minnesota and its Public Service Commission (Minnesota)[7] were

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[7] Other governmental and civic bodies participating in the further hearings included the State of Washington (Washington), the Board of Railroad Commissioners of the State of Montana (Montana), the Public Utilities Commission of the State of South Dakota (South Dakota), the Public Service Commission of the State of North Dakota (North Dakota), the cities of Minneapolis (Minneapolis) and Sumner, Wash. (Sumner), Auburn, Wash., and its Chamber of Commerce (Auburn), and the Fargo, N. Dak., Chamber of Commerce (Fargo).

particularly critical of Wyer's method of updating earlier estimates to reflect the current situation. At some locations they contend abolishments are impossible because jobs do not exist or fewer jobs exist than are slated for abolishment. Moreover, substantial job reductions since 1960 are said to suggest that applicant railroads have accomplished individually in this area more than they had hoped to accomplish through unification. Wyer's estimate of the number of jobs to be abolished is a percentage adjustment of the prior estimates. Opposing parties contend that this method of updating is a mere statistical exercise in the absence of a more specific study of precise opportunities for job abolishment in the light of operational and technological changes which may have occurred since the 1960 estimate. Absent such evidence, opposing parties contend that the Wyer estimate is valueless.

Wyer's method of updating anticipated job abolishments, briefly, is based on the belief that the overall number of jobs to be abolished will vary from the number estimated in 1960 in approximately the same proportion as the net change since 1960 in the total number of railroad employees. Using the latest employment data available (December 1965), Wyer determined the percentage of change, up or down, in the number of employees in each of 128 reporting divisions or categories of employees of GN, NP and CBQ (using only groups I and II of CBQ, which include the bulk of positions to be affected). The percentage of change determined in each category was applied to the number of jobs estimated in 1960 to be abol-

ished in each category, and the number was adjusted accordingly. The result, as stated, was a scaling down of the total number of jobs to be abolished. The current wage and benefits levels (January 1967) were used in converting job abolishments to dollar savings. The method used, according to applicants, produces a reasonable and reliable approximation of the savings achievable through job abolishments. As explained, *infra*, in the section of this report titled Benefits of Merger, we consider the data of sufficient reliability to enable us to make a reasoned decision on reconsideration.

Other evidence was adduced at the further hearings by Justice, Minnesota, and Rio Grande. Justice directed our attention to statements made in February 1967 at hearings in another railroad unification proceeding [8] pending before the Commission, by officials of the Milwaukee and North Western, which allegedly cast some doubt upon the value of protective conditions for those two roads. This contention will be discussed, *infra*, in the discussion on Competitive Considerations.

Minnesota introduced various statistics in support of its contentions that applicants' estimated savings and needs for additional revenues are overstated. Rio Grande offered the testimony of a transportation consultant to the effect, generally, that the Wyer methods of updating have a surface plausibility, but do not provide the necessary basis for rational decision. Rio Grande's director of transportation research as-

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[8] Finance Docket No. 24186, et al., in which there is proposed a unification of the Milwaukee and North Western.

sailed numerous aspects of the Wyer report as updated, in particular applicants' failure to utilize current gross ton-mile data in computing traffic flows and costs, and the failure of applicants' savings estimates to fully reflect operating changes since 1960, such as improved transit time, limited consolidations of freight and passenger operations between particular points, and changes in traffic patterns. Also criticized were applicants' reliance upon savings based on a downgrading of certain through routes and labor costs based on agreements reached with only two labor groups.

Certain prepared statements of witnesses for Rio Grande and Union Pacific, offered in evidence, were rejected by the examiner as going beyond the limited scope of the further hearings. Rio Grande's statements dealt with such matters as the impact of the proposed unification upon competitive rail service in the northern tier States, and the effect upon Rio Grande of inclusion in the unification of the Burlington. Union Pacific's statement pertained to an updating of the adverse effect upon Union Pacific from the proposed unification. We agree that these statements were inadmissible on the ground cited, and that they were properly rejected.

Briefs were filed [9] following further hearing, and we have heard the parties again in oral argument.

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[9] Briefs were filed by applicants, Justice, Minnesota, Washington, Rio Grande, Union Pacific, Soo, Milwaukee, North Western, Western Pacific, and a group (Tolan Group) of 231 western shippers.

For the most part, the positions taken by the various parties on brief or in oral argument with respect to major issues have not changed materially from the positions previously taken. Since the *prior report*, however, and more particularly since applicants' acceptance of the Milwaukee and North Western conditions, the Public Utility Commissioner of Oregon and the Iowa State Commerce Commission, who had previously opposed the unification on behalf of those States, have withdrawn their opposition, and North Dakota and South Dakota, previously in opposition, now argue in support of a suitably-conditioned unification of applicant railroads. Also supporting applicants' proposal in its present posture, are Nebraska, Missouri, the Canadian Province of British Columbia, and various communities, shippers and other groups. Michigan, Wisconsin and the United States Department of Agriculture now have no objection to approval of a suitably-conditioned unification. Other than Rio Grande, none of the intervening railroads named in footnote 2 now oppose the unification, and Milwaukee, North Western and Southern Pacific now support it. However, Union Pacific, Western Pacific and Soo, with the acceptance by applicants of the Milwaukee and North Western conditions, now seek the imposition of additional conditions to protect their respective interests, or, in the alternative, modification in certain respects of the Milwaukee and North Western conditions, as later discussed. Active support for the proposed transactions was voiced for a group of 231 shippers, located mostly in Washington and Oregon.

Minnesota, Montana, Washington and Justice continue to oppose the proposed unification, as do the various communities and other interests described by the examiner, joined now by Rio Grande. Rio Grande had not participated in these proceedings prior to the filing of applicants' petition for reconsideration. Fearful of possible adverse effects upon it from the several unifications and realignments of major western railroads now pending before the Commission, it is actively participating in these and other proceedings in an effort to protect its vital interests. Rio Grande did not present its evidence on major issues at the earlier hearings, a failure that is attributed, by its counsel, to "naivete." Rio Grande now regards the proposed unification as destructive of rail competition in the northern tier States and as a threat to the continued movement of traffic over the so-called central corridor routes, in which Rio Grande participates. A substantial portion of Rio Grande's traffic is overhead traffic in connection with which Burlington is the interchange carrier, and it is from the inclusion of the Burlington in the proposed unification that Rio Grande anticipates the greatest adverse effect. Rio Grande seeks denial of the applications, or, in the alternative, if the applications are nevertheless approved, that such approval be conditioned upon the divestiture and exclusion therefrom of the Burlington.

Opposing parties reaffirmed their positions on brief and at oral argument. Montana stressed the fact that the principal transcontinental route over which NuCo

would move its traffic, GN's present route in Montana, avoids Montana's principal cities, and that after unification such cities as Great Falls, Miles City, Missoula, Butte and Helena, Mont., would find themselves located on NuCo's secondary or alternate route. Washington assailed what it regards as the destructive effects of the proposed consolidations on rail competition in the Northwest, and with Minnesota, Auburn and Minneapolis, emphasized the serious adverse effect on these States and cities expected from these transactions by way of job loss and tax loss, and from other economic causes attributable to lessening of rail competition.

NPSC and Justice point out that the record herein, except on the issue of savings, remains virtually unchanged from that on which the *prior report* is predicated. Each enumerates what it regards as fatal deficiencies in applicants' evidence on savings, and each argues that no basis thus exists for findings or conclusions different from those in the *prior report.*

Justice also sees the agreements executed by applicants with Milwaukee and North Western as part of an arrangement or understanding under which the latter carriers undertake to withdraw their opposition to the instant unification, and applicants, in turn, undertake not to contest the pending unification of the Milwaukee and North Western. Justice views such an arrangement as an objectionable attempt by these carriers to compromise their differences at the expense of the general public, and to effect a restructuring of railroad alignments in the West with no

regard for the public interest and in derogation of our statutory authority. Our duty under section 5 is to examine the proposal to determine whether it is consistent with the public interest. The fact that C&NW and the Milwaukee withdrew their opposition following the agreement does not delete from the record nor detract from the significance of the evidence they presented in opposition to the Northern Lines proposal. It is that record, as amplified on limited further hearing, and not the agreement, which justifies the result reached after reevaluation. We have the power to require protective conditions, whether agreed to or not, when the public interest demands. Accordingly, the fact that the parties may have reached an agreement in no way relieves us of our statutory duty. We approach the case in that light without regard to alleged motivation of the parties.

By letters dated August 25, 1967, and September 27, 1967, the United States Department of Justice requests, alternatively, (a) that the Commission receive in evidence or consider part of the record certain information contained in a magazine article published in July 1967 (Railway Age); or (b) reconsideration of our orders of January 4, January 20, and February 20, 1967, providing for a limited reopening of the record and denying petitions for discovery. Good cause has not been shown for granting these requests and they are denied. Cf. *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514-519 (1944), and *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 475, 484.

The Railway Labor Executive Association (RLEA) has participated in these proceedings from their inception on behalf of railroad employees and in opposition to applicants' proposal. At oral argument RLEA adverted to the attrition agreements executed by applicants with two employees' groups,[10] and acknowledged that similar agreements are in the process of being negotiated by applicants with unions representing nonoperating employees, and that pursuant to an understanding between these parties, negotiations between applicants and unions representing other operating employees' groups are being deferred pending execution of protective agreements for nonoperating employees. RLEA emphasized that its position in opposition to the proposed unification has not changed. As summarized in the *prior report*, RLEA contends that there is no showing of public gain from the proposed unification, that the unification would in fact do positive injury to the public interest, and that the adverse effect thereof on applicants' employees, and through diversion of traffic on employees of other railroads, warrants denial of the applications. RLEA seeks, if these applications are approved, protective conditions to cover all employees, of all carriers, adversely affected by the unification.

RECONSIDERATION

The order of the Commission of January 4, 1967, reopened these proceedings not only for limited fur-

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[10] The Brotherhood of Railroad Trainmen (Trainmen) and the Brotherhood of Locomotive Engineers (Engineers).

ther hearing but also for reconsideration as to all matters. It was our purpose in reopening for reconsideration to reexamine each and every issue of substance and to weigh carefully every potential advantage and disadvantage that may reasonably be expected to result from the proposed unification.

We believe that we have in the body of this report explained the basis for our later conclusions herein. Our task here is to determine whether under the statutory criteria enunciated in section 5, the proposed transaction will be consistent with the public interest. And, as this report will show, we are convinced on deliberate and searching reconsideration that the proposed unification, subject to appropriate conditions which we shall specify to protect competing railroads, employees and the general public, will be consistent with the public interest and should be approved.

Relevant Statutory Criteria

The merger application under consideration herein is governed primarily by the provisions of section 5(2) of the Transportation Act of 1940, and the national transportation policy. Until 1920, the Federal antitrust laws, which were aimed at preserving free competition, constituted the "rule of trade" in the railroad industry. *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 4 (1958).

The Transportation Act of 1920, however, marked a substantial change in congressional policy in the matter of competition between railroads. Concerned with the inefficiency of the railroads and their pre-

carious financial condition during and following World War I, and spurred by the demand for an integrated, efficient and coordinated railroad transportation system equal to the needs of our economy and defense, Congress enacted the Transportation Act of 1920. Its general purposes were to establish a new federal railway policy, thereby assuring adequate transportation services largely through consolidations and mergers and other innovations designed to restore impaired railroad credit. *Schwabacher* v. *United States*, 334 U.S. 182 (1948).

In furtherance of these purposes, the 1920 Act directed the Commission, among other things, to prepare and adopt a plan for the consolidation of the railway properties of the United States into a limited number of systems, thereby conferring upon the Commission jurisdiction over railroad mergers. Thus, Congress envisioned the nationwide consolidation of railway properties under a master plan. The Commission, however, was authorized to approve a voluntary merger or consolidation only if it was in harmony with and in furtherance of the master plan and upon a finding that the public interest would be promoted. Under the master plan, competition was to be preserved as fully as possible but Commission-approved mergers were expressly immunized from the antitrust laws.

The congressional policy enunciated in the Transportation Act of 1920 was to confirm the power of the Commission to authorize certain mergers in building an efficient national transportation system, al-

though a particular merger might substantially reduce competition or create a monopoly. In thus fostering and encouraging railroads merging into fewer systems, the Transportation Act of 1920 marked the beginning of a new era in the development of a federal policy with respect to railroad mergers in that it "reflected a realization by Congress that insistence upon the preservation of maximum competition among rail carriers was no longer essential to the public interest." *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line*, 320 I.C.C. 122 (1963), upheld in *Florida East Coast Ry. Co.* v. *United States*, 259 F. Supp. 993 (1966), affirmed *per curiam*, 386 U.S. 544 (1967).

As early as 1925, the Commission recognized the unfeasibility of working out a national plan of consolidation, and made a request upon Congress to be relieved of this responsibility. Subsequent requests led to the enactment of the Transportation Act of 1940 which embodies section 5 in its present form. The 1940 Act—Congress' latest pronouncement on the subject of railroad consolidations—relieved the Commission of its duty to promulgate a master consolidation plan. Instead, it authorized the Commission to approve carrier-initiated, voluntary plans of merger or consolidation, subject to appropriate conditions, where consistent with the public interest. The Commission, however, is not restricted to the specific proposal presented for approval. It may determine what modifications or conditions are necessary to meet the public interest test, and in the imposition of such conditions or modifications, it is not limited to those pro-

posed, favored, or agreed to by the applicants or by other parties to the proceeding.

The Act of 1940 was intended by Congress not only to transfer the function of initiating consolidations from the Commission to the carriers, but also to eliminate certain practical obstacles which had previously precluded desirable consolidations. Its purpose was to facilitate mergers and consolidations when, subject to such terms, conditions and modifications as the Commission might prescribe, they would meet certain tests of public interest, justice and reasonableness. *County of Marin* v. *United States*, 356 U.S. 412, 417-418 (1956); *Schwabacher* v. *United States*, *supra*, at 193; *Maintenance Employees* v. *United States*, 366 U.S. 169 (1961) and the *Seaboard-Coast Line* case, page 129. But, as stated in our *prior report*, the public interest scale is at balance, weighted neither for nor against merger in a particular case. Solely by the evidence bearing upon public interest can the balance be tipped.

In determining whether a proposed transaction is consistent with the public interest, the Commission is required under section 5(2)(c) to give weight to the following considerations, among others: (1) the effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public of the inclusion, or failure to include, in the proposed transaction, other railroads in the territory involved; (3) the total fixed charges involved in the proposed transaction; and (4) the interest of

the carrier employees affected. The merger terms must be just and reasonable as well to the railroads' stockholders.

As judicially construed, the phrase "consistent with the public interest" means compatible with, or not contradictory or hostile to the public interest. See *In Re Chicago, R. I. & P. Ry. Co.*, 168 F. (2d) 578 (1948); *Pacific Power & Light Co.* v. *Federal Power Comm.*, 111 F. (2d) 1014, 1016 (9th Cir. 1940). As the Court stated in *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 25 (1932), the term "public interest" is not a concept without ascertainable criteria but has a direct relation to the adequacy of our transportation system, to its essential conditions of economy and efficiency and to appropriate provision and best use of transportation facilities. We "must look for standards in passing on a voluntary merger only to the Interstate Commerce Act," which in "matters within its scope * * * is the supreme law of the land." *Schwabacher* v. *United States*, *supra*, at 198. Implicit in these standards or criteria is our responsibility to preserve a structurally adequate balance of transportation service.

The effect of a proposed merger on both intramodal and intermodal competition is a matter that we must consider in passing upon any proposed transaction under section 5(2). *McLean Trucking Co.* v. *U. S.*, *supra*. Under the *McLean* decision, the Commission has a duty to consider the effect of the merger on competitors and on the general competitive situation in the industry in the light of the objectives of the

national transportation policy. 321 U.S. at 87. In the fulfillment of this responsibility, "the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operations, lower costs, et cetera, to determine whether the consolidation will assist in effectuating the overall transportation policy." 321 U.S. at 87. In reiterating the principles of *McLean*, the Supreme Court in *Minneapolis & St. Louis R. Co.* v. *United States*, 361 U.S. 173 (1959), at 186, briefly stated that "our problem is one of accommodation of section 5(2) and the antitrust legislation." "There can be 'little doubt that the Commission is not to measure proposals for [acquisitions] by the standards of the antitrust laws.'" 361 U.S. at 186. The *McLean* and *Minneapolis* decisions stand for the proposition that although a proposed consolidation or merger might otherwise violate the antitrust laws, the Commission is authorized to approve it as an appropriate means for effectuating the national transportation policy. The principles enunciated in *McLean* and *Minneapolis*, were reaffirmed recently by the decision in *Florida East Coast Ry. Co.* v. *United States, supra.*

It is in the light of this background that we have estimated the scope and appraised the effects of the proposed merger, having in mind the purposes and objectives of the national transportation policy, and appropriate competitive considerations.

Relevant Financial Data

Great Northern, Northern Pacific, and Burlington have enjoyed a moderate degree of prosperity in recent years, and each railroad is currently in a relatively healthy financial condition. SP&S has enjoyed a similar position, but, as it is jointly owned by Great Northern and Northern Pacific, its success is dependent upon the success of its parent railroads. Pacific Coast is dependent entirely upon Great Northern. The financial position of those carriers is best portrayed in the series of appendixes attached to which reference is here made. Appendix A contains certain excerpts from the examiner's report concerning financial aspects and other matters not discussed in detail here.

The general balance sheets giving effect to the proposed merger as of December 31, 1966, are shown in appendixes B through E.

The excess of current assets over current liabilities as of December 31, 1966, produces a net working capital position for Great Northern, Northern Pacific and Burlington of $64.7 million, $81.7 million, and $22.6 million, respectively, or a combined total of $169.0 million before adjustments and elimination of intercompany balances. For the year 1966, the average monthly operating expense (less depreciation) of Great Northern, Northern Pacific and Burlington was $15.9, $12.8 and $17.2 million, respectively. The net working capital of the three roads exceeded those expenses by $48.8, $68.9 and $5.4 million, respectively, and that was more than adequate to meet normal

requirements. The pro forma balance sheet after giving effect to merger of NuCo and Burlington, including lease of SP&S, and after intercompany adjustments and eliminations, reflects net working capital, excess of current assets over current liabilities, of $154.6 million. After merger, the long-term debt of NuCo would be $824,769,598, or approximately 37.3 percent of the $2,213.0 million net recorded book value of its total transportation properties. As of December 31, 1966, the pro forma shareholders' equity of $1,813.5 million would be approximately 1.7 times the total debt structure of $1,034.3 million and thus a favorable debt-equity ratio would be shown after the unification.

Appendix F hereto reflects, as of December 31, 1966, a detailed tabulation of the long-term debt of each of the applicant railroads. It is noted that Pacific Coast had no long-term debt.

Assumption of the obligations of the bonds and encumbrances by NuCo would be, as indicated, evidenced by supplemental indentures (unexecuted copies of which are of record) executed and delivered in respect of the bonds and encumbrances of Great Northern and Northern Pacific, as soon as the Northern Lines merger transaction is effected, and in respect of bonds and encumbrances involving Burlington, as soon as the Burlington merger transaction is effected. Fixed charges to be assumed by NuCo will not exceed the total of such charges now accruing to each company individually.

Income statements for the years 1958, 1959, 1960,

and 1966 for Great Northern, Northern Pacific, and Burlington, show the following:

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
	Great Northern			
1958	$251,671,504	$27,577,798	75.04	$4.32
1959	254,559,530	26,558,273	77.15	4.35
1960	246,024,650	20,723,214	78.87	3.41
1966	281,777,075	36,547,109	73.77	5.94
	Northern Pacific			
1958	179,107,781	22,911,926	79.87	3.68
1959	185,608,782	23,781,165	79.74	3.97
1960	174,915,492	18,547,194	84.54	3.10
1966	210,189,709	30,673,591	80.26	5.08
	Burlington			
1958	$258,027,700	$19,491,732	77.61	$11.41
1959	263,072,883	17,696,143	78.99	10.36
1960	251,135,890	12,493,138	81.21	7.31
1966	289,622,347	23,810,592	78.59	13.94

It should be noted that while Northern Pacific has enjoyed a moderate degree of prosperity and is in a relatively healthy financial condition, approximately 26 percent of its net income in 1958 was derived from nonoperating property with such income accounting for approximately 38 percent in 1959, 45 percent in 1960 and 29 percent in 1966. In addition, Burlington dividends amounting to $6,226,343 were received in each of the years 1958, 1959, 1960, and 1966.

The complete income statements for Great Northern, Northern Pacific, Burlington, Pacific Coast and SP&S for the years 1958, 1959, 1960, and 1966 and income statements reflecting assumed operations for the year 1966 giving effect to the transactions in issue

are shown in appendix G. The combined income statement for NuCo for the year 1966, before giving effect to anticipated savings to be realized through unification, reflects railway operating revenues of $822.8 million with concurrent net income of $94.9 million.

Appendix H hereto, is a schedule showing earnings per share of common stock, dividends declared per share, and the amount of dividends declared for Great Northern, Northern Pacific and Burlington for the years 1951 to 1966. Earnings per share of Great Northern have ranged from a high of $6.01 per share in 1965 to a low of $3.07 in 1961; dividends declared per share ranged from $2 in 1951 to $2.63 in 1956 and $3 per share from 1957 to 1966. Earnings per share of Northern Pacific have ranged from a low of $2.41 in 1954 to a high of $5.08 in 1966; dividends declared per share ranged from $1.25 in 1951 to $2.60 per share in 1966. Burlington earnings per share ranged from a high of $16.39 in 1952 to a low of $7.31 in 1960; dividends declared of $7 per share in 1951 have remained steady at $7.50 from 1952 to 1966.

While New Company proposes to assume the existing obligations of Great Northern, Northern Pacific, Burlington, and SP&S, (Pacific Coast has none) the increase in fixed charges to NuCo will not be inconsistent with the public interest. There will be no actual increase in the aggregate fixed charges of the applicant railroads, but merely, in effect, a transference of their obligations to NuCo. There is no guaranty or assumption of payment of dividends provided

for in the plan of unification. The liability for applicant railroads' fixed charges which New Company proposes to assume is justified by the anticipated increased earning power of the unified company, the economies to be effected from unification, and by reason of the fact that the properties and property rights of applicant railroads will become the property of New Company. Because of those considerations and in view of the relatively stable financial condition of each of the applicants, the increase in fixed charges will not jeopardize the rights of security holders of the unified company or in any manner impose an undue financial burden on NuCo.

General balance sheet statements for Burlington Truck Lines, Inc. (BTL), Northern Pacific Transport Co. (NP Transport) and Superior Transfer Company (STC) as of December 31, 1966, are shown in appendix I. The income statements of BTL for the years 1959, 1960, and 1966 show total operating revenues of $15,873,191, $16,220,062, and $15,452,261 respectively, with concurrent net income of $814,587, $279,666, and a deficit in net income of $695,651, respectively.

Income statements of NP Transport for the years 1959, 1960, and 1966 show total operating revenues of $3,482,768, $3,768,860, and $5,607,933, respectively, with concurrent net income of $111,487, $9,593, and $451,316, respectively.

Income statements for STC for the years 1960, 1961, and 1966 show total operating revenues of $120,345, $95,843, and $233,539 respectively, with

concurrent net income of $10,396, and deficits in net income of $4,062 and $1,385, respectively.

THE PROPOSALS

The major proposals for unification of the operations and properties of applicants contemplate in successive steps: (1) merger of Great Northern, Northern Pacific and Pacific Coast into NuCo; (2) merger of Burlington into NuCo; and (3) lease by NuCo of the properties of SP&S for 10 years. All of the capital stock and bonds of SP&S are owned in equal amounts by Great Northern and Northern Pacific and, upon consummation of the unification will be owned by NuCo.

The related proposals contemplate (1) acquisition by NuCo of sole or joint control, as the case may be, of carriers affiliated with or subsidiary to (a) Great Northern and Northern Pacific at the time of the Northern Lines merger, and (b) Burlington at the time of the Burlington merger; (2) acquisition by NuCo of leasehold rights in respect of all trackage rights over, and all joint ownership in and joint use of, any railroad line or lines and terminals incident thereto possessed by the merging carriers at the time of the merger dates, and by SP&S at date of consummation and for the term of the SP&S lease; (3) issuance of securities and assumption of obligations and liabilities of the merging carriers and SP&S in respect of securities in carrying out the provisions of the respective merger and lease agreements, and modification of an existing collateral trust indenture (of

Northern Pacific); (4) construction of those extensions (connections), as described in appendix J, upon completion of which some segments of the present lines would no longer be needed; and (5) abandonment of those segments, as described in appendix K. Requests for authority to extend and abandon are contingent upon our approval of the unification of the described properties, and authority to abandon the described segments is contingent in each instance upon completion of the particular construction segment to which it is related. Findings of fact and conclusions thereon reached by the examiner and set forth in appendix A are adopted as our own.

The two mergers are advanced rather than a single merger to permit the direct pledge of a $70 million principal amount of Burlington first and refunding series 2010 4-percent bonds under the new consolidated mortgage which NuCo would create upon consummation of the Northern Lines merger. It would thus permit utilization of bonds secured by a first lien on Burlington property and now issuable under the Burlington first and refunding mortgage to strengthen directly and materially the new consolidated mortgage which would be in the NuCo's future general refunding and financing medium. Following unification the consolidated mortgage also would be a lien on substantially all railroad properties theretofore owned by the merging carriers.

The details of the above-related proposals for unification of the applicants are shown in appendix A.

Stock ownership by applicants in various subsidi-

aries and other companies will be acquired by NuCo as part of the unification. Such securities include the shares of stock of SP&S (now owned by Great Northern and Northern Pacific) C&S [11] (now owned by Burlington), Minneapolis, Anoka & Cuyuna Range Railroad Co. (now owned by Great Northern), Walla Walla Valley Railroad Co. (now owned by Northern Pacific); and the shares of stock of three motor carriers, BTL, NP Transport, and STC, now wholly owned by Burlington, Northern Pacific and Great Northern, respectively. The measure of control or ownership exercised by applicants over these and other carriers subject to the act was described in detail in the examiner's report.

Stock Exchange Ratio

Holders of Northern Pacific stock at the date of merger will receive under unification, common stock in NuCo on a share-for-share basis. Holders of Great Northern stock will receive common stock in NuCo on a share-for-share basis plus one-half share of the $10 par value preferred stock in NuCo for each share of common stock held at the date of merger. The Burlington stock owned by Great Northern and Northern Pacific, totaling 97.18 percent of the total outstanding Burlington stock, will be canceled but the minority stockholders of Burlington will receive 3.25 shares of common stock in NuCo in exchange for each share of their Burlington stock.

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[11] C&S, in turn, owns all the outstanding shares in FW&D.

Unification will involve no increase in outstanding debt and no increase in total fixed charges to the applicant railroads. NuCo will assume all contracts, mortgages, deeds of trust and indentures made by Northern Pacific, Great Northern, Burlington and Pacific Coast or their predecessors, and all debts, liabilities and duties of those corporations will attach to NuCo. The publicly-held funded debt will be reduced by $17,367,000, the principal amount of Northern Pacific refunding and improvement mortgage bonds which will be redeemed. Certain bonds, described in the application, will be issued by Burlington and by NuCo in connection with the unification. Such Burlington bonds will be pledged by NuCo under the proposed new consolidated mortgage and the consolidated mortgage bonds will be pledged under the Northern Pacific collateral trust indenture in order to secure the release from pledge of an equivalent amount of Northern Pacific refunding and improvement mortgage bonds. The Northern Pacific refunding and improvement mortgage bonds, when so released from the pledge will be canceled and retired.

After completion of unification, no bonds under any of the now existing mortgages of applicants can be issued for sale to the public. It is contemplated that the future financing medium, for refunding purposes or for acquiring new capital, will be the consolidated mortgage of Nuco.

The stock exchange terms agreed upon by applicants provide for NuCo to issue specified shares of its preferred and common stock as required by the terms

of the Northern Lines merger agreement and the Burlington merger agreement, and such additional shares as may be required under stock options of Great Northern and Northern Pacific outstanding at the effective date of the Northern Lines merger.

Under the agreed rate of conversion, the following schedule sets forth the number of shares of Great Northern, Northern Pacific and Burlington publicly held on December 31, 1966 (excluding a few shares reserved for conversion of fractional scrip outstanding), the exchange ratios applicable to each group, and the number of shares of NuCo's common and preferred stock required to satisfy the terms of the merger agreements:

Outstanding shares publicly held as of December 31, 1966		To be exchanged for			
		Exchange ratio		NuCo shares	
		Preferred	Common	Preferred	Common
Great Northern	6,152,652	1/2 share	1 share	3,076,326	6,152,652
Northern Pacific	6,037,836	---	1 share	---	6,037,836
Burlington	48,033	---	3 1/4 shares	---	156,107
Total	12,238,521	---	---	3,076,326	12,346,595

The shares outstanding of SP&S would remain undisturbed. All other outstanding stock of applicants would be canceled.

The above schedule does not reflect the stock requirements of the Northern Lines' stock option plans. The applicants request authority under section 20a to issue additional shares of common and preferred stock as may be required upon exercise, subsequent to merger, of options issued under the restricted stock option plans of the Northern Lines and outstanding as at the

time of merger. As of December 31, 1966, 80,698 shares of common stock and 14,226 shares of preferred stock would be needed in reserve for that purpose. The maximum number of shares required as of December 31, 1966, is as follows:

	To be issued	Reserved	Maximum
Common stock	12,346,595	80,698	12,427,293
Preferred stock	3,076,326	14,226	3,090,552

Throughout the exploratory discussions, it was recognized that difficulty in arriving at fair and equitable terms to the agreements would arise in connection with Northern Pacific's natural resources properties. The Northern Lines, aside from their consolidation committees which employed Wyer, whose report related to the operating value of the companies to be merged and controlled, each employed independent financial advisors and appraisers to evaluate the properties. These evaluations are summarized in appendix I. These reports indicate that as of September 1, 1959, the fair value of the Northern Pacific oil and gas properties was $46,845,435, on the basis of sale; that the value of the timber resources, exclusive of grazing and cultivation lands, was $45,114,000, and the estimated value of such lands $4,540,000; that, as of January 1, 1958, the going concern net worth of the oil and gas properties was $59,425,137, substantially in excess of what they would sell for; and that the value of the timber resources was $62,187,919, with a potential value of $79,668,352 on the basis of maximum recovery on a sustained yield basis. North-

ern Pacific then estimated value of its iron ore, taconite, coal, and other minerals, and its grazing and cultivation lands, to be approximately $48,700,000, and, together with leased industrial lands and buildings and unleased industrial lands and buildings, to be approximately $81,405,000, which, coupled with the estimated value of the other natural-resources properties approximated $170 million. That figure was considered by Northern Pacific to be much in excess of what the properties would sell for, and, they noted that if sold, a substantial part of the proceeds would be taxable as capital gains.

The First Boston Corporation, financial advisor to Great Northern, reported that after excluding income from land operations and considering only earnings from railroad operations and common sources (e.g., Burlington and SP&S), Great Northern contributed 66 percent and Northern Pacific contributed 34 percent of the combined earning power in the 5 years 1952-1956, whereas Morgan Stanley and Co., financial advisor to Northern Pacific, arrived at a 60-40 ratio. In addition to its studies of the railroad properties and investments, Morgan Stanley, after considering the reports of the oil, gas, and timber consultants, and using various methods of valuation, arrived at a judgment value to NuCo of $115 to $125 million for Northern Pacific's nonrail properties, including industrial, and advised that unless a share-for-share exchange could be arranged, merger would not be advantageous to Northern Pacific's stockholders. It was later agreed, however, that Northern

Pacific's industrial properties should be included as railroad properties since similar Great Northern properties are so considered.

Consideration was given to issuance of two classes (rail and resources) of stock, and spin-off of the natural resources properties prior to consolidation, before it was concluded that all Northern Pacific properties would have to be included in any agreement.

At the railroads' request, the financial advisors held numerous conferences in order to seek agreement on figures each could recommend to its principal as a basis for further negotiation. The Northern Pacific interests ultimately concluded that some concessions were justified in view of the estimated increase in net income and other anticipated benefits and undertook to work out an exchange ratio giving immediate recognition to the somewhat greater earning power, larger dividend payments and historically higher market price of Great Northern stock while preserving for Northern Pacific stockholders on a long-term basis approximately equal participation in the earnings of the combined enterprise.

Finally, on June 2, 1960, the Northern Lines' presidents agreed to recommend the ultimate basis of exchange, considered fair and equitable by both financial advisors, and on July 13 it was unanimously recommended to the respective boards of directors by the consolidation committees. The boards approved the terms and authorized execution of a preliminary agreement, leaving certain questions to be resolved,

notably the manner of Burlington's inclusion because of certain lien provisions in the principal Great Northern and Northern Pacific mortgages. We recognize that ultimate determination of a fair and equitable exchange ratio is a matter of judgment based on a consideration of many factors. Here, those factors included realistic appraisal of the terms necessary to bring about acceptance by both sets of stockholders. On the basis of past earnings experience, the merger terms slightly favor Northern Pacific stockholders while preserving to Great Northern stockholders the higher dividends justified by the most recent record differences in per share earnings. Stockholder voting on the proposals (1961) was as follows:

	For		Against	
	Shares	Percent	Shares	Percent
Great Northern	4,929,931	81.03	10,491	0.17
Northern Pacific	4,422,640	73.81	397,949	6.64
Burlington	1,700,403	99.9	310	0.02

The stock exchange ratios are seriously questioned only by Minnesota and NPSC, the latter representing about 3 percent of Northern Pacific's stockholders and about 5 percent of its outstanding shares. Its differences are engendered by the treatment given Northern Pacific's natural resources properties, while Minnesota's are derived from its belief that Great Northern and Northern Pacific stockholders would surrender equity in Burlington stock owned by those roads to the sole advantage of Burlington minority stockholders. Minnesota's argument overlooks the

fact that the treatment provided in the Burlington merger agreement for conversion into NuCo stock of approximately 3 percent of Burlington stock publicly held was jointly recommended by the financial advisors of Great Northern and Northern Pacific, and was discussed with and approved by the principal holders of Burlington stock and the boards of directors of Great Northern, Northern Pacific and Burlington as fair and equitable. The public holdings of NuCo's stock by former public holders of Burlington stock will represent 0.004 percent of the total shares of common stock issued by NuCo, and increasing or decreasing the Burlington exchange ratio would be of little consequence in the whole capital structure. Moreover, there is no probative evidence that this exchange would adversely affect applicants.

NPSC throughout these proceedings has taken the position that this transaction in the aggregate involves much more than a mere railroad merger, characterizing it as unique because of the vast natural resources properties held by Northern Pacific, although its objections to the proposal would be eliminated if we would condition our order to require spin-off of those properties in the manner it suggests.

NPSC notes that Northern Pacific did not furnish its stockholders with copies of the various appraisals of its natural resources properties for their consideration in deciding whether merger, and the terms thereof, were in their best interest. In addition, NPSC charges that unreasonable valuations were used to its detriment in establishing the exchange ratios for replacing Northern Pacific and Great

Northern stock with that of NuCo. The utilization of earnings of the two companies as the ultimate basis for determining the exchange ratios, in lieu of a definitive valuation for the railroad properties of each company and, in the case of Northern Pacific for the nonrail properties, is deemed by NPSC to have gravely underrated the contribution of Northern Pacific to the transaction. NPSC calls attention to its proposal that the nonrail properties of Northern Pacific be sold separately to a land company to be organized by its stockholders prior to consummation of the merger of the rail properties which was rejected by the hearing examiner in the earlier proceedings as unfair to stockholders. Suggested purchase price figures varied from $112 million to $117 million, although members of NPSC advanced values varying from $96 million to $295 million. It is clear their concern was in retaining present exclusive ownership of equity in the natural resources properties.

Under that proposal, the present Northern Pacific stockholders would participate only to the extent they are able and willing to pay about $20 per share, all stock not so subscribed to be sold to the public through underwriters. The proposal contemplates that all expenses of carrying out the plan, which apparently would include underwriters' commissions and expenses would be borne by Northern Pacific.

While agreeing that the current worth of each shareholder's contribution to NuCo is the proper basis for establishing an exchange ratio in rail merger proceedings, NPSC insists that in this instance earnings

are not the proper basis for measuring the contribution in relation to the natural resources properties, but rather that the market value thereof should be the determinant factor. However, if earnings are to be the basis for the evaluation, then it contends that it is necessary to employ a very high price-earnings ratio to take into account the potential earnings of the property not currently productive of income. Despite the acknowledged difficulty of arriving at definite evaluations, and it offers none, NPSC urges that such specific findings are necessary before the transaction can be approved. Finally, it urges that applicants have failed to carry the burden of proof in establishing the fairness of the merger terms, and that the uniqueness of the proposed transaction involving natural resources issue requires our most careful consideration.

Applicants agree that the treatment to be accorded the natural resources properties presented difficulty in the negotiations, pointing out that consideration was given to a number of methods of segregating the rail and nonrail properties prior to the adoption of earnings of the two companies as the primary basis for the exchange ratios. Applicants deny, however, that there was any "calculated suppression" of the appraisals of the natural resources or that the failure to furnish them to stockholders before the latter voted on the proposal was deceptive. In view of the differences in the various appraisals and the fact that the exchange ratios were determined primarily on the basis of earnings rather than on property values, the

withholding of the information purportedly was to avoid confusing the shareholders. Applicants emphasize that the Northern Pacific proxy statement, which was accepted by the Securities and Exchange Commission for filing under its proxy solicitation rules, contained the information on the production and earnings of the natural resources upon which the final agreement was rested.

In respect of the allegation of unjustness and unreasonableness in the use of earnings rather than market value to account for the contribution of Northern Pacific's natural resources properties to NuCo, applicants point out that even NPSC is unable to come forward with any definitive valuations, and that the NPSC interest is not in obtaining a better exchange ratio but to insure the sale of the natural resources properties to a land company to be formed by it as a condition to approval. Applicants further question the proposed purchase price of $112 million to $117 million in view of one NPSC member's valuation, based upon an earnings projection, of $295 million. NPSC's contentions relative to the suggested condition and the propriety of the exchange ratios are, as regards the former without merit and unfair to Northern Pacific stockholders, and as to the latter contrary to the record, which shows that the full potential value of the natural resources properties was fully reflected in the shares alloted to the Northern Pacific stockholders.

NPSC's suggested alternative to a revised exchange ratio (segregation and sale of such properties to a

new land company prior to merger) appears to us to be no real answer, involving, as it does, a requirement that, in effect, all Northern Pacific stockholders repurchase interests in property they already own, with those failing to do so frozen out of future benefits therefrom. All present stockholders, whether or not they participate in the land company, would be sharing in its expenses since they would continue as stockholders in Northern Pacific railroad property. Fundamentally, NPSC argues that Northern Pacific management, allegedly motivated by an overriding desire for merger of the railroad properties, was derelict in withholding from stockholders generally, prior to their voting on the transaction, appraisal data obtained from outside experts. We are not persuaded that this contention has merit. In any event the stockholders received the necessary essential information; there is no basis for the belief that the ultimate vote would have been substantially different under other circumstances.

The issue here is whether the exchange ratios are just and reasonable, and limited thereto, we find the record both adequate and affirmative, in that they meet the necessary and required tests: (1) that they are the results of arms' length bargaining, and (2) that they fairly reflect the contributions of each group of stockholders to the combined system. Cf. *Erie R. Co. Merger*, 312 I.C.C. 185, and *Louisville & N. R. Co. Merger*, 295 I.C.C. 457.

BENEFITS OF MERGER

To applicants.—Applicants are faced with growing intermodal competition. Tied to their steel rails and dependent upon private capital for funds, applicants are losing a steadily increasing share of the transportation market going to competitors. Construction of new superhighways and pipelines and improvements in waterways presage a competitive future even more intense than the present. Financially, applicants have enjoyed a moderate degree of success, but increasing competition and an inability to prevent traffic erosion make it necessary that applicants take measures now to assure continued success in the future. Applicants here have selected as the remedy the development, through merger and lease, of a more efficient transportation plant capable of meeting competition as well as providing equal, and in many respects, improved service to the public.

Substantial dollar savings plus an improved earnings potential constitute tangible benefits which will accrue to applicants by merger. It was pointed out in the *prior report* that because of rapidly changing conditions in transportation, comparisons between railroad earnings in recent years and those in past decades must be drawn with care. Nonetheless, such comparisons do tend to place applicants' financial position in proper perspective. For instance, the combined average net railway operating income of the Northern Lines (with SP&S), before Federal income taxes, during the 5-year period 1951-1955, was $74 million, and ranged from a low of $58.2 million

(1954) to a high of $82.8 million (1955). During the 5-year period 1956-1960 the combined average was $59 million, ranging from a high of $73.7 million (1956) to a low of $40.4 million (1960). For the 5-year period 1961-1965 the range was from $33.7 million (1961) to $65.9 million (1965), and the average was $48 million. The net railway operating income, before Federal income taxes, of Burlington during this 15-year period followed a similar pattern. The combined average, for all of the applicants, fell from $121.6 million during 1951-1955 to $86.9 million during 1956-1960, and to $73.9 million during 1961-1965.

The average rate of return for applicants during the 15-year period above referred to ranged from a high of 3.73 percent in 1955 to a low of 2 percent in 1961. Even in 1965 and 1966 when the average rate of return of class I railroads was 3.69 and 3.9 percent, and that of other industries much higher, applicants' average was 3.33 and 3.7 percent—less than the yield on nonrisk Government bonds. Upon merger, the relatively low rate of return will be enhanced. Low rates of return, if continued, may well pose serious obstacles in attracting necessary investment capital, and affect reinvestment decisions by the rails as well.

The savings benefits to be derived from the unification by applicants are estimated in the Wyer report as shown in the table, *supra*, page 9. The various studies making up the Wyer report, discussed in detail at pages 106 through 142 of the examiner's report, touch upon every phase of applicants' operations

and those expected to be performed by NuCo. In the *prior report* only two major adjustments were made in the applicants' estimates: (1) a downward revision in the cost to applicants of the conditions deemed necessary to protect the Milwaukee and North Western, and (2) a one-third reduction in the savings attributable to coordination and consolidation of facilities at common points (study I). The latter was based on the belief that certain coordinations between GN and NP would voluntarily be effected once it was established that the merger would not be permitted. Consequently we reduced the applicants' study I estimate by some $5.2 million. But many of the coordinations, though physically feasible, would produce grossly unequal benefits to GN and NP as separate carriers. Further, as concluded in the *prior report*, competition between the Northern Lines renders it difficult if not impossible, as a practical matter, to incur the expense involved in effecting such coordinations. Interpreting the record on this point is largely a matter of judgement; and, on reconsideration, we find ourselves in agreement with the applicants that the reduction is not warranted. In our consideration herein, the $5.2 million will be restored to the savings accepted as achievable through merger.

With the two exceptions just noted, it was found in the *prior report* that the Wyer study constituted a reasonable estimate of savings achievable by merger, including the basic estimates of savings realizable from job abolishments. Based upon a study of considerable depth and detail, the examiner found, as of

July 1, 1960, a savings of $32,676,759 in compensation could be gained by job abolishments upon merger. Having determined, in 1967, to reconsider these proceedings, and aware that developments since the original study could affect that estimate, we set the limited further hearing for updating that data. Updated, it is now estimated by applicants that $36,350,000 in labor savings could be attained. As previously stated, the methods used by applicants in such updating were assailed by opposing parties. For instance, the transportation consultant of Rio Grande challenged the use of a constant ratio equivalent to the percentage decline in overall employment on the grounds it fails to reflect efficiencies achieved or achievable since 1960, or new techniques employed and that a fixed number of employees, in irreducible minimum, are needed to perform certain functions. It was recognized, nonetheless, by Rio Grande that the method used was dictated by time limitations imposed, and that the results reached "may, of course, turn out to have been correct * * *."

On the whole, we are convinced that the updated estimates are a reasonably accurate portrayal of the savings attributable to the proposed unification. While not in the precise detail as the data underlying the 1960 estimate of $32.6 million in labor savings, the constant ratio formula is reasonably related thereto. Nothing adduced at further hearing nor argued by protestants convinces us that the updated estimates are not useful as reasonable guides of achievable labor savings on which a rational decision on reconsidera-

tion can be based. Such savings plainly illustrate that substantial economic benefits to applicants would flow from the unification.

The improved financial posture mentioned above will enable applicants to become stronger and more stable, and thus be better equipped to meet the growing competition now being felt. Moreover, consolidation of facilities, elimination of wasteful duplication, improved routing, better car fleet utilization, and avoidance of time-consuming interchanges among applicants will result in a more efficient railroad. Such achievements clearly are consistent with the public interest.

We have given careful consideration to the following contentions of Justice:

> (1) that the Commission (and its hearing officer) erred in accepting at the limited further hearing the evidence of Wyer that the system-wide reduction on various employee classifications would be fairly applicable to those categories of employees at the geographical points where Wyer estimated that labor savings would be achieved;
>
> (2) that the Commission erred in denying requests by Justice for discovery and/or to broaden the further hearing to develop by spot studies the effect of intervening changes upon labor savings estimated as of 1960; and
>
> (3) that it was prejudiced by the Commission's failure to act upon some of its requests for discovery and/or broadened hearing before forcing it to go to hearing on the basis of what information it could otherwise develop.

We are well aware that the technological and operational improvements on the Nation's railroads have brought about a reduction in the number of railroad employees and a redistribution in the consist of the rail labor force. This has been true in varying degrees throughout the railroad industry. We realize these processes do not stop simply because a transaction has been proposed under section 5(2)(d) or mark time while we and the courts take evidence and consider the views of all of those who are concerned with the structuring of the Nation's railroad system. Because of the complexities of rail mergers and the demands of due process, administrative consideration of these cases consumes substantial periods of time. But there comes a point at which we must honor our concomitant obligation to complete our proceedings upon a rail merger application within a reasonable time. Most crucial, as the courts have recognized repeatedly, is the point at which we are confronted with petitions for reopening and rehearing in proceedings which already have been pending, sometimes for years —with potential judicial review waiting beyond. See *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514 (1944); and cf. *Florida East Coast R. Co.* v. *United States*, 242 F. Supp. 14, reversed *per curiam sub nom. Seaboard Air Line Co.* v. *United States*, 382 U.S. 154 (1965); *Florida East Coast R. Co.* v. *United States*, 259 F. Supp. 993 (1966), affirmed *per curiam*, 386 U.S. 544; the Seaboard-Atlantic Coast Line merger application was filed with the Commission on July 22, 1960, and the adminis-

trative and judicial review proceedings were completed on April 19, 1967.

It is in this context that we have considered the Department's contentions. As we have recognized above, the level and consist of employment on the Nation's railroads are changing constantly. We assume that the length of the proceedings on any significant rail merger application means that by their completion it can be shown that the estimated savings at some points or in some operations have been overtaken or outdated by technological change. Similarly, we recognize that our permissive order approving a merger does not require that it be effectuated in terms of every savings-producing change visualized by a management consultant. Rather, we recognize that with the passage of time, when an approved merger finally is consummated, it will realize savings which were not anticipated, while other anticipated savings are not achieved. Thus, in the present proceeding, we are convinced that labor cost savings, in the approximate magnitude discussed elsewhere in the report, will occur. Moreover, in our judgment the likelihood that the Department would have been able to show otherwise through the discovery or further hearing procedures which it sought, was not sufficiently great to justify any additional time and expense in this already prolonged proceeding.

As is implied above the exact amount of merger savings cannot be precisely determined under any circumstances. Here, we are convinced that they would be substantial and of sufficient amount to justify the

merger, both in terms of enabling the merged company to improve its service to the public and of providing a return on investment more nearly commensurate with the investment requirements of a viable and progressive transportation system.

To shippers.—Many of the operational changes that benefit applicants and make possible the savings, would inure to the benefit of shippers as well. Foremost are the consolidation of applicants' corporate and departmental structures, consolidation of facilities at 39 common points (especially at Twin Cities, Head-of-Lakes, Seattle, Spokane, and Portland-Vancouver), consolidation of repair facilities, elimination of interchange delays and duplicate train services, the use of new classification yards, the grouping of cars for block trains, the combined purchase of materials and supplies, and the use of the shortest or most efficient routes. Thus, applicants' ability to operate more efficiently and at lower cost should be reflected in the service and rates afforded shippers and receivers. Shippers will benefit directly, of course, from faster and more dependable single-line service, extremely important here in view of the long distances involved and the nature of the products of the Northwest. Shippers will further benefit from improved car supply, wider routing with more liberal transit privileges, partial loading and unloading privileges, and reconsignment and diversion privileges, increased capital for improvement and modernization, and improved tracing and claim services. Overall lower-cost transportation will also redound to the benefit of those

shippers disadvantaged due to location and low-rated commodities.

These transactions will produce faster trains. Applicants' most expedited high-volume heavy-power service from Seattle to Chicago is now scheduled at 94.5 and 97.25 hours. Under unification these would be replaced, respectively by 82.5 and 84-hour service.

A concrete illustration of the benefits of such faster schedules is that they would allow the fruit and other agricultural products of the Yakima Valley to reach Chicago about 12 hours, and Kansas City about 24 hours earlier, while Wenatchee (Wash.) fruit would arrive at Chicago more than 9 hours earlier. Great Northern traffic from Spokane and west thereof through Laurel would be advanced 24 hours in moving via Northern Pacific's short line, and other faster schedules would generally improve deliveries at Chicago by about another 24 hours by avoiding municipal switching and spotting prohibitions: westbound schedules would also be expedited, although not as drastically, the greatest reduction being about 10 hours.

Internal rerouting by applicants would be over t[illegible] shortest or most economical routes available: NP between Minneapolis and Casselton, and between Sandpoint and Spokane; GN between Casselton and Sandpoint, and between Spokane and Seattle; and SP&S between Spokane and Portland. The need would decrease for switch-engine service and operating personnel on the lines from which traffic is taken. Construction of new yard facilities at Seattle, Spokane, and Minneapolis, together with increased use of exist-

ing retarder yard facilities at Minot, N. Dak., and Pasco, Wash., would make it possible to route increased traffic over the "preferred" transcontinental route with little increase in operating forces at intermediate points, and would permit decreased forces at such points as Whitefish, Mont., and Wishram, Wash. The benefits of the faster transcontinental services over the "primary" transcontinental route would not be confined to the transcontinental traffic and the shippers and receivers thereof. They would also accrue to shippers and receivers at intermediate points thereon and at points on the so-called "secondary" lines. This is true because transcontinental freights are usually full-tonnage trains, and now offer limited service to shippers and receivers at intermediate stations; whereas, following unification, new freight schedules would be introduced to better meet the needs of intermediate points, and local trains adjusted to conform thereto, with less congestion and delay.

Thus, intermediate points on the alternate line in North Dakota and Montana now served by NP train No. 605 would be served by a newly scheduled train, No. 603 from Minneapolis, with reduced transit times to Jamestown, Mandan, Dickinson, Glendive, and Forsyth. Similar beneficial results would flow to points such as Forsyth from Chicago. Billings, now served by backhaul from Laurel in late-second-day delivery, would receive direct, next-morning service from Minneapolis. The Milwaukee's service at Billings as a result of the protective conditions would, of course, further enhance the Billings situation.

Eastbound, Laurel-Chicago time would be reduced by more than 3 hours as a result of Twin Cities terminal improvements, and service from Laurel to the Twin Cities would be vastly improved at the intermediate stations of Glendive, Dickinson, Mandan, Jamestown, and Fargo-Dilworth, as would switching service at the Twin Cities themselves.

Shippers would have the benefit of additional routes over New Company's lines in any combination with intermediate junctions opened to form crossover routes between the Northern Lines, and between those roads and the Burlington at Billings and Sioux City. These are routes which have historically been closed to retain to each of the Northern Lines its long haul. The resulting wider choice of routing increases such attendant shipper benefit as transit, partial loading and unloading, and diversion and reconsignment. The expansion of transit privileges benefits producers and processors of numerous commodities important to this area, including lumber, grain, feed, fertilizer, and iron and steel, and ingredients and products made from those commodities. Here again, the benefits from the opening of the various gateways to the Milwaukee and the North Western multiply, not only from the competitive standpoint but from the standpoint of actual service to shippers and the elimination of artificial barriers to the development of new markets, services, and sources of supply.

Maintenance and ready availability of records under centralized control and responsibility will facilitate the tracing and location of shipments, the ordering of empty cars, and the processing of shippers'

loss and damage claims. Expedited handling and reduced switch movements should reduce damage from impact and delay.

As a unified system, New Company would have the benefits of more at-home junctions, shorter routes, and improved handling to meet shippers' car requirements, particularly as to specialized equipment. Through the faster turnaround time made possible by shorter routes and facilitated terminal handling, it is anticipated that 639,097 car days (the equivalent of 1,750 cars daily) would be saved, with a savings of 61,555 car days merely through the elimination of duplicate reserves (held on shippers' orders) at 14 of 36 points served by more than one of the applicants.

An additional factor in helping achieve a better car supply would be centralized responsibility in lieu of present ineffective mutual appeals for cars, especially since boxcar requirements reach their peak at different times on applicants' lines, but so close that one is reluctant to release cars to another. Empty cars would be routed to the point of nearest demand and the number of "home" cars to be returned would be increased at such large junction points with other roads as Chicago, St. Louis, Kansas City, Omaha, Denver, and Portland. The shipper benefits resulting from these factors are spread throughout the whole spectrum, resulting in faster transit and quicker delivery times, less damage and fewer claims, easier tracing, and overall, a more expedited and satisfactory service.

Shippers now utilizing the service of more than one applicant in joint-line movements will derive benefits

from generally lower single-line rates, and from elimination of switching charges assessed on noncompetitive traffic where one of the applicants now acts as a switching carrier on traffic to or from a point on another's lines. Clerical time would be saved on such matters as car ordering, tracing, and diversion, and demurrage and freight accounting costs would be reduced.

To the general public.—The general public may be expected to benefit from the merger in various ways. Elimination of duplicate facilities at some common points would release desirable real estate for productive development, and various communities, particularly Spokane, would benefit by elimination of or substantial reduction in street hazards and congestion. The public will also benefit from the increased ability of the applicants to meet the increased intermodal competition by providing improved, lower-cost service. Advances made over the years by other transport modes in the areas served by applicants make it imperative for the railroads to increase their competitive capability. Illustrative of these advances are plans to develop further waterways for increased barge navigation, and the completion of Interstate Highways 90-94, which will allow a reduction in truck transit time from 60 to 36 hours between the Twin Cities and Seattle.

The merger will benefit the public through the enhancement of intramodal competition as well. By virtue of the conditions being imposed here for the benefit of other railroads, particularly Milwaukee and

North Western, those carriers will not only benefit in their own interest as railroads but will be in position to pass on the benefits so realized to the shippers and areas they serve. Thus, the Milwaukee, by reaching Portland directly, will be a rate-making transcontinental railroad, not only on traffic moving across the northern tier, but to and from California as well. Likewise, the Sumas condition will allow the Milwaukee to provide rail competition on traffic to and from Canada.

The opening by applicants of 11 interior gateways to the Milwaukee will give many shippers a realistic choice of railroads for the first time in history.[12] Not the least of the benefits thereof will be the opening of new markets, transit points, and sources of supply for shippers and receivers located on applicants' lines who cannot now reach points on the Milwaukee not served by applicants, and those located on the Milwaukee to whom applicants' lines are now closed. The same purposes, on a smaller scale will be served by opening two gateways to the North Western at Oakes and Crawford.

In addition, merger will provide NuCo with an increased capacity to serve the national defense, a capacity to handle on its main lines up to three times the traffic handled in the early 1960's.

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[12] The effect was well stated by a North Dakota representative, who said, "That, baldly and simply, is giving (the shipper at NuCo local points) a small club to short haul the merged system in the event he is not satisfied with the treatment he is getting."

COMPETITIVE CONSIDERATIONS

The *prior report* approached this case under the view that the policy of section 5 of the act, as amended in 1940, was something other and less than "to foster and encourage" rail mergers (328 I.C.C. at 522-523). This view contributed materially to the result there reached. Upon reexamination of legislative history and relevant authorities we conclude that the policy of the act is clearly to facilitate and thereby foster and encourage consolidations which can be shown to be consistent with the public interest. By removing the requirement of a "master plan," imposed by the 1920 legislation, Congress intended to and did remove a major obstacle to rail consolidations. That the 1940 Act was designed to ease the procedural way for mergers, and certainly not as any restriction upon them, is apparent from the language of the Supreme Court in *County of Marin* v. *United States*, 356 U.S. 412, 417-418 (1958), reiterated only this year in *B. & O. Ry. Co.* v. *United States*, 386 U.S. 372, 387 (1967):

> * * * the result of the 1940 Act was a change in the *means*, while the *end* remained the same. The very language of the amended 'unification section' expresses clearly the desire of the Congress that the industry proceed toward an integrated national transportation system through substantial corporate simplification. [Emphasis in original.]

On reconsideration we view anew the question of competition in light of our finding that the 1940 amendment was certainly not negative or restrictive

toward mergers, but was at least a procedural tool designed to facilitate, promote and foster rail mergers where consistent with the public interest. In determining whether a transaction is consistent with the public interest, the Commission is, of course, required to consider the competitive consequences involved; but "as a factor in determining the propriety of [railroad mergers] the preservation of competition among carriers, although still a value, is significant chiefly as it aids the attainment of the objectives of the national transportation policy." *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 85-86 (1944); *Minneapolis & St. L. R. Co.* v. *United States*, 361 U.S. 173, 187 (1959). Thus the undisputed fact that the merger of the Northern Lines will result in an elimination of the competition previously existing between them, while relevant to the requisite evaluation of "the effect of the merger on competitors and on the general competitive situation in the industry" (*McLean*, *supra*, 321 U.S. at 87), is not controlling or conclusive and does not in itself automatically compel denial of the applications.

Competition is no longer "the *desideratum* of our railroad economy" as in the period prior to 1920. *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 293, 315 (1954) (Appendix). Beginning with the Act of 1920, and continuing through the passage of the Act of 1940 preservation of competition has lost the controlling significance it once had. As expressed in the merger recommendations of the Presidential "Committee of Six" whose efforts contributed mate-

rially to the enactment of the present section 5 in 1940.[13]

> Competition between railroads is of continually lessening importance to the public as other modes of transportation supply more and more of that competition which was once provided only by competition between the railroads themselves. The result is that further railroad consolidations may be effected in many cases with great public benefit.[14]

The Supreme Court has noted that emphasis upon competition in itself as a national policy:

> * * * would most strikingly disregard areas where policy has shifted from one of prohibiting restraints on competition to one of providing relief from the rigors of competition, as has been true of railroads. * * *
>
> Federal legislation affecting railroads is a familiar but far from unique example of those many areas of economic activity in which serious inroads have been made on an original policy favoring competition. *F.C.C.* v. *RCA Communication, Inc.*, 346 U.S. 86, 92-93, (1953).

Finally as the Supreme Court recognized in *McLean, supra*, 321 U.S. at 83, section 5, together with the national transportation policy reflect:

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[13] *Schwabacher* v. *United States, supra.*, 334 U.S. at 193, footnote 12 (1948); *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co., supra*, 347 U.S. at 319 (Appendix); H. Rept. No. 1217, Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. (1939), pages 1-2; S. Rept. No. 433, Committee on Interstate Commerce, 76th Cong. 1st Sess. (1939), pages 1-2, 28-29.

[14] Report of Committee Appointed by the President to Submit Recommendations upon the General Transportation Situation, page 31 (Dec. 31, 1938).

> * * * the altered emphasis in railroad legislation on achieving an adequate, efficient, and economical system of transportation through close supervision of business operations and practices rather than on the enforcement of free competition in various phases of the business.

For these reasons, as seen in the recent Seaboard-Atlantic Coast Line merger, we may properly approve a transaction as consistent with the public interest even though it eliminates competition between two previously competing railroads in a given area and even where the transaction "presents a head-on collision between the antitrust laws and the Interstate Commerce Act." *Florida East Coast Ry. Co.* v. *United States*, 259 F. Supp. 993, 996 (M.D. Fla., 1966), affirmed *per curiam*, 386 U.S. 544 (1967), sustaining our decision in *Seaboard Air Line, R. Co.—Merger—Atlantic Coast Line*, 320 I.C.C. 122.

The competition found decisive in the *prior report* was that between GN and NP in an area extending from the Twin Cities and Head-of-Lakes across the northern tier of States to the Pacific Coast. The preservation of this competition was crucial to the first decision. On reconsideration we conclude that this factor should not be decisive. We find that a properly conditioned merger—with a substantially strengthened Milwaukee—will actually enhance competition in the area and will be consistent with the public interest, notwithstanding elimination of such competition as exists between the two lines.

At the outset, it should be noted that, as to many communities and shippers in the area involved, the

lines of the GN and NP are in fact, not competitive with each other. In Montana and North Dakota, for example, the lines are generally widely separated, as much as a hundred miles apart. Obviously a shipper located on or near the lines of one road, but 50 or 100 miles from the line of another, is not influenced by competition in the selection of carriers.

Next we consider those common points in the northern tier States of Minnesota, North Dakota, Montana, and Washington, where shippers have a choice-real or theoretical—as between the Northern Lines. Rail competition will be eliminated entirely at 47 communities (141 stations), served by GN or NP but by no other railroad. Rail competition will be diminshed but not eliminated at 160 stations now served by at least one other road in addition to the Northern Lines.

The tabulation below shows, as of 1960, in column A, the extent to which these stations reflect the Northern Lines (including SP&S) operations in the foregoing northern tier States, and in column B, the extent to which they reflect the systemwide operations of all of the applicants:

	Column A	Column B[1]
	Percent	*Percent*
Class 1 (served by GN and NP but no other railroad)		
Stations	4.25	3.15
Cars	6.60	4.20
Tons	5.60	3.61
Revenues	6.16	4.51
Class 2 (served by GN, NP and one or more other railroads)		
Stations	7.47	5.27
Cars	32.67	20.89
Tons	27.81	17.75
Revenues	37.71	26.90

[1] Percentages for class 2 stations in column B are based on 236 stations of all applicants in 8 States.

Limited to the northern tier, and exclusive of overhead traffic, 88.28 percent of the Northern Lines stations, which accounted for 60.73, 66.59 and 56.13 percent, respectively, of the cars, tons and revenues in those States, would not be directly affected by the merger. Systemwide for all applicants, there would be no direct competitive impact, no lessening of competition, at 91.58 percent of applicants' stations. These 4,102 stations accounted for 74.91, 78.64 and 68.59 percent, respectively, of applicants' cars, tons and revenues in 1960.

The number of stations at which rail competition would be eliminated entirely is small, and these stations do not produce any great volume of applicants' business. Moreover, some of these stations are located on the main line of one applicant and on the branch line of another, with the result that loss of competition is more theoretical than real.

In analyzing the competitive effects systemwide, i.e., beyond the four nothern tier States, the class 2 stations are of significance, because they involve large commercial centers and rail gateways which generate a substantial part of the applicants' tonnage—21 percent of the carloadings, 17.75 percent of the tons, and 26.9 percent of the revenue. Some of these stations are located at centers which, though served by more than one of the applicants, do not in fact have competition between the applicants today. For example, Sioux City has Burlington and GN end-to-end; the Twin Cities have the Northern Lines and Burlington end-to-end; SP&S, serving Portland from the East, does not compete with the Northern Lines or any

other railroad on Portland's traffic to and from the North.

The stations in classes 2 and 4 (which, after the merger, would have at least two railroads) account for 21 percent of the applicants' carloadings, 48.5 percent of their tonnage, and 58.4 percent of their railway revenues. Among this group of stations are 10 major terminals (having 140 stations) which comprise only 3.1 percent of the applicants' stations, but account for 26 percent of their carloadings, 22 percent of their tonnage, and 30 percent of their rail revenues. These terminals and pertinent data about them are listed below:

Class	City	[1]Railroads	Applicants' revenues	Truck Lines	Bus Lines	Air Lines
			Million			
4	Chicago------	32	$30.8	294	10	20
4	Denver-------	5	8.1	49	9	8
4	Kansas City --	12	16.9	77	9	8
4	Omaha -------	8	9.4	65	3	3
4	St. Louis-----	20	7.2	167	16	8
2	H-L----------	[2]6	27.3	18	4	2
2	Portland -----	3	17.6	45	3	11
2	Seattle-------	3	40	35	5	12
2	Spokane------	4	12.4	15	3	3
2	Twin-Cities --	[2]9	37.5	76	3	8

[1] Indicates number of railroads serving after this merger.

[2] Number would be one less after C&NW-CGW merger.

While recognizing that not all carriers serving a particular point are in competition against each other, we cannot overlook the indications in data such as that shown above that, at the commercially most significant points in the applicants' territory, there is, and after the merger would continue to be substantial intermodal and intramodal competition.

In our view the competitive impact upon the class II stations is not so significant as to warrant denial

of the applications. First, apportionment of traffic between GN, NP and the other roads serving these points is not wholly the result of interplay of competitive forces, but often results from other factors entirely. Second, shippers at these class II locations, in addition to the Northern Lines and one other rail carrier, are generally served by other modes of transportation vigorously competing for traffic. Third, by virtue of the conditions imposed in this case, the Milwaukee—which is the other railroad serving many of the class II points—will be substantially strengthened as a meaningful transcontinental competitor.

Here, as in the Seaboard-Atlantic Coast Line merger, we must acknowledge that substantial competition would remain and new competition would be created. What was said in that case is equally applicable here:

> The impact of this merger, both good and bad, will be felt throughout the southern region and in evaluating its competitive advantages and disadvantages, we must consider * * * the sum of all of the competitive transportation facilities that will remain available in this broad area.
>
> * * * *
>
> * * * the overall reduction in rail competition in the Southeastern States viewed as a whole will be relatively moderate when considered in the light of the alternative rail service that will be provided by competitors of the merged company at practically all of the major industrial centers throughout the affected area. The impact of this reduction in competition becomes even less significant when we consider the increasingly strong

competition that the merged company will encounter from other modes of transportation. (320 I.C.C. at 166).

We also accord great weight to the testimony of the many shippers, associations, and other groups who supported the merger often with express recognition that some competition would be eliminated or reduced. Many witnesses from within the northern tier, including some of the class I and class II points, supported the merger in one form or another. Much of the testimony as to the general value of competition between railroads was abstract and unparticularized. Some of this testimony actually emanated from witnesses who supported the merger but expressed concern over its impact on a particular carrier. Thus witnesses for General Electric, Rayonier, A. O. Smith and Zenith—whose testimony was singled out in the prior report (328 I.C.C. at 517)—actually favored the merger, subject to appropriate conditions for the Milwaukee. While recognizing that competition between roads can and does produce benefits, we also note testimony of several witnesses in this record to the effect that they perceived no differences in service as between competitive and noncompetitive points. On balance, in concluding that loss or reduction of competition between GN and NP in the northern tier does not require denial of the applications, we believe considerable weight should be given to the testimony of those witnesses supporting the merger—including particularly that pertaining to the users of rail service in those areas most immediately concerned.

Denial of the applications for the purpose of preserving competition between the Northern Lines would merely perpetuate the existing dominance of the GN and NP in the northern tier, with the Milwaukee, despite shorter routes and superior grades, left to its comparatively small share of the market. Preservation of the competitive *status quo* would, in our view, relegate the Milwaukee to an increasingly marginal and deteriorating role. On the other hand, a properly conditioned merger, with NuCo competing against a strengthened Milwaukee, will serve to enhance rail competition, achieve a more desirable competitive pattern, while at the same time conferring substantial benefits upon the shipping public throughout the territory involved in this case.

We reject the allegation of Justice that reliance upon the strengthening of the NW and Milwaukee as competitors to a merged Northern Lines would be a baseless ground on which to approve the merger. Its argument is predicated on excerpts of testimony given in the NW-Milwaukee merger application (Finance Docket No. 24182 et al.) where certain officials of these roads allegedly depreciated the value of the protective conditions to them. Justice contends that these officials themselves view the conditions as a "wash" whereby they will gain only what they will lose.

This testimony must be viewed as a whole and in its proper setting. The testimony was given in a proceeding wherein the officials themselves were attempting to justify their own merger as consistent with the public interest. In this context it is understandable

that the Milwaukee and NW officials would attempt to portray their own merger in its best light. Moreover, the testimony dealt only with estimates of traffic diversion. The witnesses did not discuss their roads' abilities to obtain newly generated traffic; nor did the testimony detract from the obvious advantage to shippers of having a meaningful choice as between transcontinental carriers.

Then, too, this collateral allegation is too broad and not clearly established by the whole of the testimony in the NW-Milwaukee merger case. Much of that testimony is general, carefully qualified, and does not directly support the contention pressed by Justice in this case. Thus while some witnesses may have downgraded the conditions, the same witnesses at other times recognized their benefits. One of the witnesses at one point stated that he had not formed an independent judgment as to the benefits of the conditions. Another witness, though originally testifying to a "wash," later limited his statement and recognized that there would be dollar benefits to his road from the conditions. At oral argument before the Commission in this case Milwaukee responded to the Justice contention by clearly stating that it "will be a stronger competitor against the new company with the conditions requested than it is against the separate" applicants.

In any event we find this collateral attack unpersuasive. Opening of the 11 gateways, and in particular Portland, makes it evident we believe, that Milwaukee will become a viable transcontinental rail competitor. As such, it will have a broader base upon

which to solicit additional traffic, and to enter into heretofore inaccessible markets. Plainly its competitive posture will be enhanced. Indeed, even a North Western-Milwaukee merger will not result in a transcontinental service; only the opening up of Portland to Milwaukee will accomplish that.

EMPLOYEE PROTECTION

Under section 5(2)(c), we must give weight to, among other factors, the interest of the carrier employees affected by the proposed unification. Section 5(2)(f) provides that as a condition of our approval of any transaction under section 5(2), we "shall require a fair and equitable arrangement to protect the interests of the railroad employees affected." [15] Section 5(2)(f) further provides that notwithstanding any other provisions of the act, the carrier or carriers and the duly authorized representative or representatives of its or their employees may enter into agreements providing for the protection of employees.

In the *prior report* it was found that the merger would result in a net loss of about 5,200 jobs on the applicant railroads, and that through the so-called bumping process the number of employees affected would exceed that number. In that report, the finding that "substantial" hardship would be inflicted upon employees as a result of merger was a significant fac-

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[15] As found in the *Seaboard-Coast Line* case, employees affected are those of the carriers involved in the merger and most immediately affected thereby. Our discussion and conclusions herein should be viewed in that context.

tor in the decision to deny these applications. Since then, the situation as to protection of employees has been considerably changed. At the time of the *prior report* applicants indicated their willingness to provide the protection of the *New Orleans* conditions (*New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271, as modified in *Southern Ry. Co.—Control —Central of Georgia Ry. Co.*, 317 I.C.C. 557, 317 I.C.C. 729, and 320 I.C.C. 377). As noted above, applicants now have revised their estimate of the number of jobs to be abolished, and concomitantly have revised their labor protection costs. Whereas the *New Orleans* conditions were offered then, attrition conditions will now be provided. Under the former, the total cost of employee protection was estimated at $4.96 million, all chargeable to operating expenses and deductible in computing Federal income taxes.[16] Now, based on the agreements entered into since the *prior report* with the Engineers and Trainmen and expected to be reached with other crafts, applicants estimate the total cost of employee protection at $10.15 million, similarly chargeable to operating expenses.[17] Thus, while the costs of the labor protective conditions are greater than contemplated at the time of the *prior*

[16] At the then current income tax rates, only $2.38 million would have been borne by NuCo, and interest at 5 percent on that amount, or $119,081, was included in Study XIX as a charge against unification.

[17] Based on tax rates as of January 1, 1967, of this total labor cost $5.28 million would be borne by NuCo, and interest at 5 percent on this amount, or $264,051 is included in Study XIX in lieu of the prior figure.

report, so too are the protections offered employees somewhat improved.

The agreements entered into between applicants and the Engineers and Trainmen provide attrition-type protection [18] for employees, plus various monetary benefits, retirement allowances, and protection against loss from the sale of homes and the cancellation of unexpired leases. The stated purposes of the agreements are: (1) to assure employment and/or earnings to employees covered by the agreements, (2) to expedite the changes in services, facilities and operations resulting from the merger, and (3) to prescribe procedures by which existing agreements between the parties shall be modified and consolidated to conform with such operating changes. Under the agreements, NuCo is obligated to take into its employment all covered employees of Great Northern, Northern Pacific, Burlington and SP&S and no employee is to be deprived of his employment status or placed in a worse position with respect to compensation, rules governing working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment. In addition, NuCo will assume and continue the employment relationship of employees on furlough or leave of absence. The agree-

[18] In *Chesapeake & O. Ry. Co.—Control—Western Maryland Ry. Co.*, 328 I.C.C. 684, 715, we stated that attrition means that "no reduction in force of employees shall occur other than principally by death, retirement, discharge for cause or resignation." For simplicity, the phrase "attrition protection" or "attrition agreement" will be used to reflect this concept.

ment recognizes the right of NuCo to transfer work throughout the merged system and contemplates the consolidation and extension of seniority rosters and seniority districts, on an equitable basis, pursuant to implementing agreements providing for the use of employees and the allocation and rearrangement of forces. In lieu of the arbitration procedure prescribed by section 13 of the Washington Job Protection Agreement of 1936, disputes are to be settled by referral thereof to a Disputes Committee composed of one member from each party, and a neutral member to be selected by the parties, or in case of their disagreement by the National Mediation Board.

Under the agreements, "employees would receive guarantees and job assurances for the rest of their working lives * * *." As stated, applicants have indicated their willingness to enter into similar attrition agreements with all affected employees—both union represented and individual employees not represented by a union—whom we are required by law to consider when weighing the proposed transactions. All these employees then are free to enter into such separate agreements. After analyzing these agreements, we are convinced that the interests of carrier employees covered thereby will be adequately and fairly protected by the terms of these agreements. In fact, the protection thereby afforded, providing as it does job security as well as monetary benefits, could hardly have been achieved except for the merger. Under the terms of the last sentence of section 5(2)(f), the entering into such agreements takes from us the obligation of

providing protection for employees covered thereby. As to them, therefore, we make no requirement for protection, but do find the agreement does not render the proposed transaction inconsistent with the public interest.

For any employees entitled to protection who do not enter into separate protective agreements, we must, under the first part of section 5(2)(f), provide a fair and equitable arrangement so that the transaction will not result in their being placed in a worse position with respect to their employment . Agreements of the character discussed above would provide the guaranteed benefits, and be fair and equitable. In the interest of uniformity and in view of applicants' willingness to extend attrition conditions to all employees, we require, as a condition to our approval of these transactions, the attrition conditions the same as set forth in the agreements mentioned above, be applied to all affected employees who have not entered into separate agreements. In order that all such employees shall be informed of the protection being hereby afforded, NuCo will within 30 days of the date of our order herein be required to disseminate to them the terms of the agreements already reached, informing them at the same time that they are being afforded such protection.

We believe that the effect of attrition protection for all employees of the merged system will tend toward greater efficiency and higher morale among the employees and will thereby promote the national transportation policy in the development and maintenance of an adequate and effective transportation system.

Cf. *United States* v. *Lowden*, 308 U.S. 225, (1939). Additionally, we here conclude that the hardship on employees, which in the prior report prompted, in part, our denial of these applications, has been alleviated.

RAILROAD PROTECTION

It was found in the *prior report* that approval of the unification, subject to appropriate conditions, would not imperil the survival of any railroad operating in the territory involved. We reaffirm that finding here. Based on published 1960 data of the railroads concerned, applicants had estimated that diversions of traffic attributable to the unification, from NuCo to other railroads and from other railroads to NuCo, would have resulted in a loss of more than $9.6 million in revenues to the more than 3 dozen railroads, large and small, affected thereby. Giving effect to the protective conditions which he recommended, the examiner found that the gain in revenues by NuCo as a result of traffic diversions would have aggregated more than $3.2 million. Giving effect to the additional protective conditions deemed appropriate, the *prior report* found that the result would have been the loss by NuCo of more than $2.5 million in revenues, reflecting a net diversion to Milwaukee and North Western of more than $11.6 million and a net gain from other railroads of over $9.1 million. As viewed by the Commission and applicants at that time, the potential revenue loss attendant upon imposition of all of these protective conditions might have precluded consummation of the transactions even if approved.

Applicants have since reappraised their position, and we, in the light of the evidence adduced at the further hearings, have reappraised ours. Succinctly stated, our prior finding that imposition of these conditions might preclude consummation is no longer valid.

Although in the *prior report* the Commission was sharply divided over the action taken on the unification proposal there was striking unanimity with respect to the need for protection for Milwaukee and North Western. Significantly, it was agreed that in any merger of the Northern Lines it would be necessary to include most but not all of the conditions that were sought by Milwaukee [19] and North Western.[20]

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[19] Summarized, they are:

1. Establishment of through routes and joint rates via the new gateways of Fargo and Linton, N. Dak.; Miles City, Judith Gap, Great Falls, Bozeman, Butte and Missoula, Mont.; and Spokane, Seattle and Tacoma, Wash., on all traffic interchanged at such junctions between NuCo and Milwaukee. (Bozeman has been substituted in lieu of Lombard, Mont., by agreement of the parties.)
2. Trackage rights for Milwaukee over NuCo's tracks between Longview Junction, Wash., and Portland, Oreg.
3. Trackage rights for Milwaukee over NuCo's tracks between Renton and Snohomish, Wash., and between Everett and Bellingham, Wash.
4. Extension of Milwaukee's service to Billings, Mont.
5. Elimination of dual basis of switching charges in effect west of Twin Cities.
6. Reestablishment of rate relationships affected by the merger.

[20] Summarized, they are:

1. Establishment of through routes and joint rates via the new gateway of Crawford, Nebr., on all traffic interchanged at such junction between NuCo and North Western.

[Footnote 20 continued on next page]

In particular, it was clear that any approval of the proposed unification would require as a minimum the granting of Milwaukee conditions 1, 2, 3, and 5, and substantially all of North Western's conditions. Applicants had opposed those conditions in the belief that they were not necessary for the protection of those railroads, and that conditions to improve the position of applicants' competitors would be inappropriate in a section 5 proceeding. In view of the public interest criteria of section 5(2) and the goals of the national transportation policy there is no question of our power to improve the position of carriers affected by a proposed merger. Now, as a result of applicants' reappraisal, and subject to approval by their stockholders, applicants have agreed to accept all conditions that have been requested by the Milwaukee and North Western and considered appropriate by us. Under the standard routing conditions, agreeable to all railroad interveners, existing routes, gateways, traffic and operating relationships between applicants and these carriers would be preserved.

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[20] Continued

2. Establishment of through routes and joint rates via the new gateway of Oakes, N. Dak., on all traffic interchanged at such junction between NuCo and North Western.

3. Improved interchange at Minneapolis, Minn., through operational conditions.

4. Cancellation of North Western rental obligations for tracks and facilities not used after unification and sale or lease of Union Yard trackage to North Western.

5. Improvement in North Western interchange at Head-of-the-Lakes, with Duluth, Winnipeg and Pacific Ry. Co. (DW &P).

The effect of the Milwaukee and North Western conditions would be to strengthen the Milwaukee—both as to revenue potential and competitive posture. Milwaukee would receive all of the benefits that it has requested, including access to Billings, and North Western would also receive all the major benefits requested. Applicants have also accepted a condition which would require NuCo to "improve and expedite interchange of freight with the Milwaukee at the Twin Cities."

As modified by the conditions which we impose hereinafter, most of which were the subject of agreements between applicants and the railroad interveners, the proposed unification presents an entirely new perspective for intramodal competition in the efficient and economical movement of transcontinental, western and Pacific Coast traffic. That perspective portends for a stronger capability in those railroads individually and collectively to prosper and to effect numerous economies and efficiencies from which the public will benefit.

Western Pacific occupies a position which is similar in some respects to that of the Milwaukee. Its principal interest herein stems from its competitive position, vis-a-vis Southern Pacific, in connection with traffic moving between California and points in the Northwest (including traffic moving through California), which is interlined with the Northern Lines. Most of Northern Pacific's California traffic is interchanged with SP at Portland, and much of Great Northern's is interchanged with WP at Bieber. Some of the latter traffic is interchanged at Portland and Chemult with

SP, but this interchange is limited by the fact that GN is shorthauled thereby. Under a stipulation with SP, NuCo would not insist upon its long haul via Bieber on southbound traffic, but would, in effect, compromise by replacing Portland and Chemult with Klamath Falls (located some 70 miles south of Chemult, to and from which GN operates over SP's tracks); on northbound traffic SP would endeavor to keep its long haul to Portland, but, in any event would carry the traffic at least as far as Klamath Falls. In these circumstances, WP, which obtains 20 percent of its total freight revenues from Bieber gateway traffic, and which originally contemplated reliance solely on the standard routing conditions, entered into its own stiplation with applicants so that it might retain its Bieber traffic rather than lose it to the new Klamath Falls gateway. In this way, WP would maintain for itself, for its connections, and for its patrons an equality of competitive circumstances. Santa Fe, which participates in this traffic, has also entered into a stipulation with applicants.

In our opinion, those aspects of the agreements between applicants and the various railroad interveners, which are basically the standard routing conditions tailored to the specific situations involved, represent the voluntary action of free parties, each looking to its reasonable interests and those of its patrons and markets.

In our opinion, these stipulations are indeed in the public interest and should be approved. The combination of the equalization of opportunities through the

Bieber and Klamath Falls (or Chemult or Portland) gateways and the Milwaukee's Portland and Sumas-route (trackage rights) conditions, should aid the establishment of genuine rail competition on the Pacific Coast, to the great benefit of the shipping and consuming public. Only UP opposes Milwaukee's entry to Portland, basing its opposition on the forced sharing of the fruits of its investment in the Portland area. Outside of the stipulation, of course, we have no direct jurisdiction over UP in these proceedings; however, in the light of the agreements between applicants and the intervening railroads, upon Milwaukee's entry into Portland over NuCo's tracks other provisions of the law will apply to UP-Milwaukee relations there as connecting carriers.

UP estimates that its potential annual loss of revenue through diversion to the Milwaukee as a result of the latter's Portland entry would be $1.1 million. That is less than one-fourth of 1 percent of UP's system railway operating revenue. Diversion of that proportion would not significantly affect UP's ability to provide adequate service in its territory. However, we believe UP will be able to retain much of the vulnerable traffic. In this regard we have considered not only the strength and vigor of UP and the growth potential of the area, but also the fact that the addition of the Milwaukee as a competitor at Portland would be somewhat offset by the elimination of Northern Pacific and Great Northern as separate competitors. Certainly the slight loss of traffic that UP might sustain would neither have a deleterious effect on service

to the public nor outweigh the many substantial public interest considerations which favor the Milwaukee's direct access to Portland. This Commission is not under a mandate to protect against all diversions in this kind of transaction; we are concerned with diversion only as it bears on the public interest.

Upon opening of the 11 gateways west of Twin Cities the Milwaukee would be in a position to close Twin Cities, which would particularly affect Soo. Our findings herein are conditioned to prevent this contingency.

We believe that the overall effect of the conditions imposed here will portend for a strong degree of intramodal rail competition in the affected territory, promote the effective development of improved transportation services to the shipping and receiving public, and comport generally with the purposes and objectives of the national transportation policy as declared in the act.

The "terms * * * conditions and * * * modifications" we find to be just and reasonable in connection with, and to which we make subject, our ultimate finding that the proposed mergers and lease are within the scope of section 5(2)(a) and will be consistent with the public interest are set forth in appendix L.

Other Issues

Certain additional matters merit attention. One is the issue of economic effect or impact of the unification on various communities in which, under the plan of operation of NuCo, there would be loss of job op-

portunities or tax revenues due to elimination or transfer of railroad facilities and services, and rerouting of traffic over the shortest or most economical routes of the combined railroad in lieu of the present routes over the separate applicants' lines. The impact upon employees and upon other railroads in the territory has already been discussed. The impact upon the communities themselves forms the basis for much of the opposition to the unification by such States as Minnesota and Washington, by such communities as Auburn, Sumner and Minneapolis, and by interests in such communities as Livingston, Spokane and Seattle. These economic disturbances affecting local governments and populations would be primarily in the nature of temporary dislocations. In many instances, the adverse effects would be offset by positive benefits. The greatest impact, it appears, would result from the elimination in great part of the now substantial interchange at the Twin Cities between the Northern Lines and the Burlington, due to the single-line service which NuCo would offer between Chicago and the Pacific Northwest. The adverse effect would be magnified, it is alleged, by the opening to the Milwaukee of additional western gateways which would, in turn, eliminate additional interchange at the Twin Cities.

As indicated in our discussion of statutory criteria, the primary concern of this Commission herein is the development of an efficient and economical transportation system. Our particular area of responsibility is found in the Interstate Commerce Act, and while our consideration necessarily extends to other matters affecting the well-being of the several States and com-

munities, we must look to the act for the standards governing unifications of this nature. The record does not show, moreover, that the transportation requirements or the well-being of these areas and communities would best be served by denial of these applications. To the contrary, the evidence does not indicate any long-range, serious adverse effect on them. In our view, these mergers, suitably conditioned, augur an era of increased railroad strength, both in intermodal and intramodal competitive aspects in the long run resulting in a benefit to, and not a burden on, communities in the northern tier States.

Much stress was placed during the earlier stages of these proceedings on the effect of the unification on motor carrier rights and operations now controlled by the individual applicants. Motor carrier rights held by GN and Burlington involve operations in unrelated and unconnected areas, and are restricted mostly to services which are auxiliary to or supplemental of rail service. Similarly, the routes of the motor carrier subsidiaries of GN, NP and Burlington traverse, for the most part, entirely different and unconnected geographic areas. It is thus clear that following the unification of applicants each subsidiary motor carrier would continue to operate its own equipment under its own authority and over its own routes, and that the proposed transactions would create no new motor carrier network. The only change would be in the ownership, NuCo in lieu of the individual applicants, and no adverse effect would be had on competing motor carriers.

We note that, in the interest of corporate simplification and to facilitate administration and regulation, the recommendation was made by the examiner that, after consummation of the transactions hereinafter approved, early consideration be given by NuCo, subject to the Commission's prior approval, to consolidation of all of the motor carrier operations into a single corporate entity, and to consolidation into similar corporate entities the different groups of subsidiary service companies control of which NuCo will acquire through transactions. We concur with and adopt these recommendations, and the recommendation, similarly made, that early consideration be given as well by NuCo to a finalization of the status of SP&S and other affiliated railroads by merger into the NuCo system.

One final comment is in order. Prior to the further hearings, no substantial objection was raised to the inclusion of the Burlington in the proposed merger. Such objection is now raised by Rio Grande. As preciously indicated, proffered evidence relating to the alleged effect on Rio Grande of inclusion of the Burlington was rejected. However, on brief and at oral argument, it was made clear that Rio Grande's objections are based on the position taken by it that inclusion of the Burlington in the merger is not necessary to achieve the savings estimated from unification, that the Burlington is capable of being operated as a separate and independent carrier, that the maintenance of a separate and independent Burlington is necessary to carriers participating in the movement of traffic over the central transcontinental corridor, and that inclu-

sion in the merger of the Burlington would result in substantial damage to Rio Grande.

Although Rio Grande made no timely offer of evidence on this issue during the earlier hearings, such evidence was introduced by others and the issue was considered by the examiner. The testimony of Wyer, for example, was to the effect that the great bulk of the estimated savings from unification are not possible without inclusion of the Burlington, and that, operationally, the Burlington, providing access to the great cities of the Midwest, is absolutely essential to the proposed system. There is no probative evidence on the other hand, of damage resulting therefrom to Rio Grande or any other railroad. The examiner concluded for these reasons and others set forth in his recommended report, that inclusion of the Burlington is necessary to the merger. We reach the same conclusion, not only for the reason that the Burlington, in our opinion, is necessary to the proposed system if it is to fully achieve the results for which it is being created, but also in order that the many shippers and receivers served by the Burlington may participate in the public benefits flowing from the unification.

On September 1, 1967, after the close of the further hearing, Rio Grande filed a petition seeking a hearing for the purpose of presenting evidence on the overall effects and cross effects of: (1) the proposed merger of the applicant carriers herein, (2) of the consolidation proposals in Finance Docket No. 22688, et al., *Chicago & Northwestern Railway Company—Control —Chicago, Rock Island & Pacific Railroad Company,*

the *Rock Island* case, and (3) the consolidations proposed in Finance Docket No. 24182, et al., *Chicago, Milwaukee & North Western Transportation Company—Consolidation—Chicago & Northwestern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, the (CNW-Mil) proposal. The petitioner further seeks withholding of decisions in the above-mentioned cases until determination is made of the effects of these proposals. The applicants replied to the petition.

The Rio Grande request places in sharp perspective the important question of what will be the effect of our decision here upon the general railroad structure in the West generally in the event that other pending western rail unifications should later also warrant our approval. While we will not follow the course of action proposed by Rio Grande, we will herein provide an effective procedure by which that impact can later be measured and appropriately dealt with.

Although, as discussed earlier herein, this Commission is enjoined under the existing law to test each railroad merger application on its own record as advanced by its proponents, we are not restricted to a simple approval or denial of the specific proposal presented. This Commission has a broad and flexible power to relate the application to other pending proposals, to determine what modifications or conditions are necessary to protect the public interest, and to impose conditions necessitated by consummation of the transaction. As particularly relevant here, where a number of applications are presented in the same ter-

ritory, the Commission is faced with various procedural alternatives: Should it move ahead with the processing of separate applications, should it consolidate them for handling at one time on a common record, or should it handle them on separate records deciding them concurrently in light of one another? A key consideration in weighing these alternatives is the question of how best to protect the public and competing rail carriers caught up in the merger movement who may not be materially injured by consequences of one merger but who could sustain serious injury from the cumulative effect of a second or third merger in combination with the first.

As to whether the Western railroad realignment should be handled on a consolidated record or on an ad hoc basis, we have consistently adhered to the latter approach. Our experience makes it clear that a consolidation of the records of these cases would have been unworkable. On the other hand, were we to process each case separately but withhold final decisions until the last proceeding would be ripe for decision, the carrier interests and the public interest would be caught in a treadmill of litigation.

Consequently we have chosen to test each transaction and its probable impact from the standpoint of events reasonably forseeable at the time of decision. Obviously, this procedure may present problems—namely: (1) the fact that some parties, though not seriously affected by any one transaction standing alone, could face adverse consequences from the cumulative effects of a second or third merger; or (2) subsequent approval of the second or third merger, could

require adjustments which, in the first case, would have been imposed had the three proceedings been decided simultaneously.

In this respect, Denver & Rio Grande in its pending petition has requested this Commission to institute a separate proceeding at this stage to test out the cumulative and cross-effects of the three basic Western unification proposals (those in the *Rock Island, C&NW-Milwaukee,* and *Northern Lines* proceedings) actively pending before this Commission. The objective would be not only to obtain conditions or adjustments which approval of all or some of these transactions may warrant, but also to pursue its arguments that none or only some of them be approved. Accepting Rio Grande's premise would amount to a de facto consolidation of all proceedings without any apparent benefit to be derived by the public. Such a step would place a new and formidable impediment in the path of the entire merger movement in the West despite the public benefit to be derived from soundly conceived rail unifications.

We recognize the possibility, however, that after later decisions are reached in other western railroad unification proceedings, some modification or adjustment may be necessary for the benefit of Rio Grande or others. The Commission therefore reserves jurisdiction for a period of 5 years following consummation of the transactions herein authorized to impose such just and reasonable conditions upon petition by any party in interest, or on its own motion, after hearing, as may be necessitated by any cumulative or crossover problems stemming from approval of this

merger and any other transaction authorized under section 5 with respect to the territory involved. *B. & O. Co.* v. *United States*, 386 U.S. 372, 387 (1967). This reservation of jurisdiction, of course, contemplates only the imposition of such conditions as would not render these transactions inconsistent with the public interest. Solely by way of example, a condition subsequently imposed herein might include the requirement of a grant of trackage rights by the merged company to another railroad or railroads in the territory involved to alleviate any competitive impact caused by this transaction or the transactions which may be authorized under section 5 in the *Rock Island* or *Milwaukee* cases. The Commission shall also retain jurisdiction over these proceedings for a like period of 5 years for the purpose, among others, of considering petitions, under section 5(2)(d) of the act, by any railroad in the territory involved requesting inclusion in the merger so authorized. Matters arising under these reservations of jurisdiction will be handled expeditiously. Consummation of the transactions herein authorized shall constitute irrevocable assent by applicants to the Commission's reservation of power to impose, after hearing, such just and reasonable conditions as may be necessary or appropriate. (See condition 33).

SUMMARY

We have in this report viewed this proceeding not only in the light of the statutory criteria relative to this case, but also considered it within the larger context of the western rail merger picture. We cannot

isolate our actions herein from these developments, but intend this decision to be a beginning step in the orderly resolution of what has become a highly involuted situation affecting many railroads throughout the territory.

The result in the prior report was the product of a weighing of three factors: a lessening of competition as between GN and NP; an adverse effect upon employees; and the benefits to be derived by applicants and the shipping public. Specifically, the Commission put the question as follows:

> * * * we must decide whether the disadvantages of a substantial lessening of competition, coupled with the adverse effect on carrier employees, outweigh the advantages that would be derived by applicants and by the shipping public. 328 I.C.C. at 522.

On reconsideration of these factors, based upon the entire record—including the material adduced at the limited further hearing—we now reach a different conclusion. The concern expressed in the prior report as to employee hardship has been relieved by the attrition conditions imposed and agreed to. The speculation that imposition of conditions for the benefit of Milwaukee and NW might actually preclude consummation has been set to rest by the agreements accepting those conditions. The preservation of competition between the Northern Lines in the four northern tier States, which was a dominant factor in the prior decision, we now view in a different perspective and do not see it as an invincible impediment to this merger.

Like the many shippers who support the applicants and who do business in the said States, and like the numerous States, State and Federal agencies, communities and shipper groups which have dropped their opposition and now favor the merger, we see this transaction as a means for achieving, through appropriate conditions, overriding benefits to the public through improved transportation. Broadening the focus of our appraisal to the area relevant to transcontinental traffic and other interterritory considerations, and reweighing the facts pertaining to the ever-increasing intermodal competition, have made it apparent that this merger can lead to the creation of meaningful rail competition through strengthening the Milwaukee and the NW, as well as making the combined applicants a more proficient transport agency. Viewing the considerations anew, we conclude that the proposals, with requisite conditions, are entirely consistent with the public interest.

Ultimate Findings

Any increase in total fixed charges or guaranty or assumption of payment of dividends or fixed charges resulting from the unification will not be inconsistent with the public interest. Provision has been made for the protection of the traffic of other carriers and no other railroad has requested to be included in the unification. Conditions have been imposed for the protection of railway employees who may be adversely affected and adequate transportation service to the public will be assured by the unification. As condi-

tioned herein, the various transactions under consideration meet the requirements prescribed by sections 5(2) and 20a and b of the act, and conform generally with the purposes and objectives of the national transportation policy declared by Congress. We are convinced the transactions should be approved.

Any contentions and arguments not specifically discussed herein have been considered and found without material significance.

On reconsideration we find (1) in Finance Docket No. 21478 that, subject to the terms and conditions set forth in appendix L herein found just and reasonable (a) merger of the properties and franchises, including motor carrier operating rights, of Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co., and Chicago, Burlington & Quincy Railroad Company, into the Great Northern Pacific & Burlington Lines, Inc., for ownership, management and operation; (b) acquisition by Great Northern Pacific & Burlington Lines, Inc., of sole or joint control of carriers (including motor carriers) subsidiary to or affiliated with the merged carriers, through stock ownership or otherwise, and of all leasehold, trackage and joint use and joint ownership rights in any railroad line or lines and terminals incident thereto possessed by the merging companies; (c) lease by Great Northern Pacific & Burlington Lines, Inc., of the lines of railroad and other properties owned, used, or operated by Spokane, Portland and Seattle Railway Company, for a period of 10 years and through the terms of said lease acquisition by the Great Northern Pacific and Burlington Lines, Inc., of

sole or joint control of carriers subsidiary to or affiliated with the lessor and of all leasehold trackage, joint use and/or joint ownership rights in any railroad line or lines and terminals incident thereto held by lessor, are transactions within the scope of section 5(2) of the Interstate Commerce Act, will be consistent with the public interest, will enable the Great Northern Pacific and Burlington Lines, Inc., as in the case of its predecessors in interest, to use service by motor vehicle to public advantage in its rail operations, and will not unduly restrain competition: (2) in Finance Docket No. 21479, that (a) the proposed issuance by Chicago, Burlington & Quincy Railroad Company of not exceeding $70 million principal amount of its first and refunding 4-percent bonds, due August 1, 2010, (b) issuance by the Great Northern Pacific and Burlington Lines, Inc., not exceeding 17.5 million shares of common capital stock, without par value and of not exceeding 3,102,333 shares of preferred stock, par value $10 each, and not exceeding $71,500,000 principal amount Series A Consolidated Mortgage 4-percent bonds, due October 1, 1984; (c) assumption by the Great Northern Pacific & Burlington Lines, Inc., of the obligations and liabilities of the Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co. and the Chicago, Burlington & Quincy Railroad Company and companies subsidiary to or affiliated with them, including obligations contingently guaranteed solely by them or jointly with other guarantors, and, during the term of the lease of the Spokane, Portland and Seattle

Railway Company, the obligations and liabilities of the lessor and companies subsidiary to or affiliated with said lessor, including obligations contingently guaranteed solely by the lessor or jointly with others; and (b) the pledge by Great Northern Pacific & Burlington Lines, Inc., of $71,500,000 principal amount of its Series A, Consolidated Mortgage 4-percent Bonds, due October 1, 1984, as collateral security under Northern Pacific Collateral Trust Indenture; and the modification by the Great Northern Pacific & Burlington Lines, Inc., of the status of the Northern Pacific Railway Collateral Trust Bonds through a supplemental indenture, all for the purposes set forth herein in connection with the transactions authorized in Finance Docket No. 21478, (a) are for lawful objects within the applicants' corporate purposes, and compatible with the public interest, are necessary and appropriate for and consistent with the performance of service to the public as common carriers and will not impair their ability to perform that service, and (b) are reasonably necessary and appropriate for such purpose, and should be authorized herein: and the modification and alteration of the status of Northern Pacific Collateral Trust Bonds through a supplemental indenture thereto providing for assumption of Northern Pacific Railway Company's obligations under the Northern Pacific Collateral Trust Indenture, proposed substitution of collateral for the elimination of certain provisions of the Collateral Trust Indenture relating to substitution of collateral, and for grant of a right to the holders of the Collateral Trust Bonds to

direct the manner of voting the pledged Series A Consolidated Mortgage bonds, is just and reasonable, and (a) within the scope of paragraph 1 of section 20b of the Interstate Commerce Act, (b) will be in the public interest, (c) will be in the best interest of applicants, of each class of stockholders and of holders of each class of obligations affected by such modification or alteration, and (d) will not be adverse to the interest of any creditor of applicants not affected by such modification or alteration: (3) in Finance Docket No. 21480, that the present and future public convenience and necessity (a) require construction and operation by Great Northern Pacific & Burlington Lines, Inc., of connecting lines of railroad in Douglas County, Wis., Pine, Stearns, Wadena, Wilkin, Clay, and Polk counties, Minn., Cass and Grand Forks Counties, N. Dak., Lewis and Clark County, Mont., Bonner County, Idaho, Spokane, Whitman and King Counties, Wash., and Multnomah County, Oreg., as set forth in appendix J hereto and; (b) permit abandonment by Great Northern Pacific & Burlington Lines, Inc., of portions of the lines of railroad of Great Northern Railway Company in Clay County, Minn., and Lewis and Clark County, Mont., and Spokane County, Wash.; and of portions of the lines of railroad of Northern Pacific Railway Company in Wilkin County, Minn., and Spokane County, Wash.; and (c) by Spokane, Portland and Seattle Railway Company, as lessor, in Spokane County, Wash., as set forth in appendix K hereto.

An appropriate order will be entered.

VICE CHAIRMAN TIERNEY, dissenting:

In permitting consummation of this merger, the Commission has tossed away a golden opportunity to exercise meaningful control over the pending western merger proceedings.[1] The majority's action, if left unchecked by the courts, will restrict our alternatives in the pending proceedings—perhaps, confine us to a "Hobson's choice."

In my judgment, the decision reached herein should be "tentative" until we decide the other major western railroad merger proceedings, at the very least, the *C&NW-Milwaukee* proceeding. This, along with the utilization of conditions precedent, hereinafter discussed, would give us effective continuing control over these western rail mergers.

I recognize that this innovative procedural device precludes immediate consummation of the involved merger, thus postponing realization of some benefits to be achieved through consolidation rather than cooperation. However, the entering of a final order may force some parties, whose interests could well be satisfied in either the *C&NW-Milwaukee* or the *Rock Island* proceedings, to perhaps needlessly challenge this order, thus also delaying consummation of this merger.

In addition to the time, effort, and money which the

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[1] Finance Docket No. 24182, et al., Chicago, Milwaukee and North Western Transportation Company—Consolidation—Chicago & North Western Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company (*C&NW—Milwaukee*); and Finance Docket No. 22688, et al., Chicago & North Western Railway Company—Control—Chicago, Rock Island & Pacific Railroad Company (*Rock Island*).

use of a "tentative" decision would save for all parties and the Commission, such an approach (1) would enable us to view the general railroad restructuring in the West in a sharper and more realistic perspective; (2) would inform all parties of our views with each "tentative" decision in the western realignment; (3) would allow us, after separate or consolidated proceedings—if such proceedings were necessary—to provide appropriate relief from the adverse cumulative and cross effects of a second or third merger in combination with the first—before the initial merger is firmly cemented; and (4) could be used to insure that effective rail competition remained in the northern and central corridors after consummation of any merger. Lastly, if and when our final orders are challenged, the courts would gain a *total*, as opposed to a *fragmented*, picture of our considerations in the western railroad mergers. Under the majority's approach, the courts and the parties are left to speculation. As the Supreme Court has emphasized repeatedly "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499, 511.

At the present, we have only a partial picture of the eventual western railroad structure. In my judgment, until the total plan is before us it is impossible to reach a final decision in the public interest. Under section 5(2)(c) of the act, we are required to consider, among other things, "the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed trans-

action." The majority, in attaching the conditions subsequent, recognizes our lack of knowledge of what adverse cumulative and cross effects the approval of the second and third mergers in combination with this merger might have upon the public interest and upon other rail carriers within the involved territory. Geographically, this territory stretches from the Pacific Ocean to the Great Lakes. Because of such a vast expanse of territory the term, "* * * other railroads in the territory involved * * *," in sections 5(2)(c) and (d) takes on added significance. In *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 87, the Supreme Court stated that we have the duty "to consider the effect of the merger on competitors and on the general competitive situation in the industry in light of the objectives of the national transportation policy." Those required statutory findings cannot be made with finality until the other merger proceedings are before us.

By the broad reservation of jurisdiction, the majority recognizes the close interrelationship between this proceeding and the other pending western merger cases. Postponing action in that fashion, however, entails an unnecessary risk of having the courts either (1) remand this proceeding for consideration in conjunction with the other merger proceedings or (2) affirm our order, but strike down some of the conditions imposed after consummation of the merger.[2] At

[2] Hereinafter, this type of condition will be referred to as a condition subsequent as distinguished from the condition precedent, or sometimes called a condition prerequisite, a condition which is specified by us, accepted by the pertinent parties, and complied with—*prior* to the consummation of the merger.

this stage of the western rail merger proceedings, we do not know the identity of the parties who may be adversely affected or the precise relief required to make the transaction consistent with the public interest. Moreover, we have no assurance at this time that we can draft conditions subsequent in the public interest which also will be equitable and acceptable to all parties concerned. Experience indicates that when consummation is permitted, there is little likelihood of enthusiastic acceptance of later imposed conditions. Furthermore, should a court, pursuant to applicants' urgings, strike down any condition subsequent as being inequitable or otherwise unacceptable, the merger stands—albeit stripped of the objectionable condition.

Past merger cases demonstrate that conditions required as a prerequisite to consummation are excellent administrative tools. In *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1, we made the divestiture by the Pennsylvania Railroad of its holdings in Norfolk and Western Railway a condition of our approval. In *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 475, the Pennsylvania Railroad readily agreed to sell the Lehigh Valley to the Chesapeake and Ohio-Baltimore & Ohio Railroads, following a recommendation of the hearing examiners that such a sale should be required if it were later found to be in the public interest in order to assure New York City an additional competitive line. Further, Penn-Central acceded to taking over the passenger as well as the freight business of the New Haven Railroad. Contrast such uncontested

acceptance with one example of a condition subsequent whereby the Norfolk and Western Railway was allowed to consummate its merger with the Nickel Plate several years ago, but it is still contesting the inclusion of the Erie Lackawanna Railroad, Delaware and Hudson Railroad, and the Boston and Maine Corporation into its system.

If, however, we issue only "tentative" decisions before any merger is consummated, we can determine which parties may be adversely affected by the cumulative or cross-problems stemming from the combination of mergers and we can readily devise appropriate relief which might otherwise be litigated for years. Then, if some of the conditions precedent are unsatisactory or even highly objectionable to applicants, they cannot consummate the merger and disavow the conditions. In such a situation the applicants, if they desire to consummate the conditioned merger, would undoubtedly hasten to advise us how, in their opinion, the same conditions could be equitably imposed, or the same ends accomplished—consistent with the public interest. This also would have the benefit of giving applicants a clear picture of what conditions are to be imposed on them rather than risking consummating the merger with no idea of what may additionally be imposed on them in the future.

I do not disagree that we have power to add on conditions after a merger has been consummated, given appropriate circumstances. My point is that it is easier for the agency and fairer to applicants and others to impose the conditions at the beginning. The other alternative would be for them to refrain from

judicially challenging such conditions precedent. We have already witnessed a demonstration by applicants of their willingness to accept conditions which initially were thought by them to be inequitable and inappropriate—i.e., the Milwaukee and North Western conditions.

Because of our limited funds and the shortage of personnel experienced in the merger field, this Commission should utilize every possible administrative device which enlists or insures the maximum constructive cooperation on the part of all western rail carriers, especially from the applicants to be merged, rather than adopting procedures which places a premium on applicants' judicially contesting conditions which may be specified and imposed long after the merger has been consummated.

Although individual final reports were issued in each of the three northeastern rail consolidation proceedings, we were presented there with problems involving some financially weak rail carriers and other problems of a pressing nature. In the western merger picture, however, since there are none of those pressing problems, nor any policy, Commission or otherwise, demanding individual final reports seriatim, we should correlate these proceedings, thus insuring that all factors have been adequately considered and that the restructuring of the western railroads is in furtherance of the national transportation policy.

Section 17(3) of the act authorizes us to conduct our "proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice." We have often

recognized that we have the power, in appropriate circumstances, either to consolidate proceedings in which the issues are similar or closely related, or to postpone a particular decision when so required by the public interest. Likewise, we can coordinate separate proceedings when necessary to secure the best possible results. I am not advocating a moratorium on mergers; nor am I here insisting on a consolidation of all pending western merger proceedings. I would merely withhold entry of the statutory findings and the final order, labeling the decision "tentative." In my judgment, following this approach would place us in a better position to carry out our statutory functions. The other railroads in the involved territory would be more assured of proper protection—perhaps, better protection also. Certainly, the cooperation of all of the western rail applicants in the final disposition of these proceedings would be greatly enhanced.

Turning now to the merits of the case, I am concerned with the effectiveness of the competition remaining in the northern corridor. Presently we have two large and relatively strong rail carriers and one relatively weak carrier in this corridor; and now with the majority's action there will be one very large and financially strong rail system and one relatively weak carrier. The Milwaukee conditions will inject much needed vitality into that carrier; but on the evidence before us, I am unable to conclude that this railroad, absent further strengthening, will be a viable competitor of the merged applicants.

Our attention has been called to the fact that this competitive deficiency is being emphasized by the Mil-

waukee officials in the *C&NW-Milwaukee* proceeding and that the Milwaukee conditions imposed here are being described therein as a "wash." The majority considers this a "collateral" attack and as being "unpersuasive," "too broad," and "not clearly established by the whole of the testimony." I cannot agree. That record is not before us. In fact, the hearings are still being conducted.

In the past, evidence of competitive impact has been withheld only to appear in a later proceeding in the form of evidence that the railroad adversely affected by the first merger must be permitted to merge with another railroad in order to protect itself. In my judgment, we have the duty to examine that evidence in support of the second merger before disposing with finality the first merger proposal, especially when it is obvious that the various aspects of the two proposals are interrelated.

It is not my intent to deprecate the value of the Milwaukee conditions to the Milwaukee, for it is apparent that without these conditions the Milwaukee would not be an effective transcontinental competitor. This would be true even if its application in the *C&NW-Milwaukee* proceeding is successful. At the same time, however, exaggerated importance should not be attached to such conditions. In my view, the merged applicants, with their huge combined capital investments and superior solicitation forces, among other things, can undoubtedly minimize the competitive impact of the Milwaukee conditions.

In summary, the point of my departure with the majority on the merits of these proceedings centers on

their conclusion that the Milwaukee will be an effective competitor in the northern corridor. On the basis of the partial picture presently before us, in my judgment, a decision on that issue cannot be reached. Only after the evidence in the *C&NW-Milwaukee* proceeding is properly before us will we be able to make that determination. Only in the foregoing manner can the necessary direction and control of these proceedings be retained by the agency statutorily charged with the responsibility for rail mergers.

COMMISSIONER BROWN, dissenting:

I do not agree with the majority that the proposed transactions are shown to be consistent with the public interest. Reconsidering the matter at this time, after a rather limited further hearing, I am still not convinced that this merger should be approved. Applicants admittedly have entered into job protective agreements with various labor representatives which will adequately protect the interests of the railroad employees affected. Aside from this factor, which does not constitute grounds for approval of this unification, it is my opinion that the evidence has not changed materially from that previously considered.

While applicants updated their estimated savings from the proposed consolidation at the further hearing, they made no thorough studies in several of the areas where they anticipated realizing a large part of their estimated savings. In the absence of such studies, it is my opinion that applicants have failed to prove their case in this respect and, accordingly, I still believe that the estimated savings will be more in the

neighborhood of that shown in the prior report and much less than that relied upon by the majority herein.

The other salient factor to be reconsidered is the fact that applicants have now agreed to open up a number of gateways to the Milwaukee and North Western and it is apparent that this was done to get these carriers to withdraw their objections to this merger. Similar situations occurred in other merger cases and, needless to say, it was necessary for this Commission to go beyond such agreements in order to properly decide those cases, as we are clearly required to do under the statutory criteria enunciated by Congress. On the basis of the record herein, I do not believe that these agreements will make the present Milwaukee an effective competitor of the merged Northern Lines. Therefore, if these transactions are approved, we will have a single railroad composed of the Great Northern, Northern Pacific, and Burlington, which are large, strong, and prosperous railroads, on the one hand, competing against the much weaker Milwaukee on the other. The opening of the gateways, and other conditions agreed to by these applicants, will not change the fact that there will still be a drastic lessening of competition, due primarily to the fact that the Northern Lines constitute either the majority or the only lines serving many of the points. I, therefore, do not believe that applicants have met their burden of showing that this merger will be in the public interest.

In approving the proposed transactions, the majority relies on reserving jurisdiction for a period of 5

years in two respects (1) for imposing such just and reasonable conditions as may be found necessary because of problems stemming from approval of this merger or any other merger, such as the *Rock Island* and *Milwaukee* cases, and (2) for the purpose of considering petitions by any railroad seeking inclusion in the merger authorized herein. It would appear to me that an approval of this type leaves more work to be done than has been accomplished thus far. In addition, even though the Rio Grande has taken the position that it will be affected by the inclusion of the Burlington and that there is no pressing need to include that railroad at this time, the above conditions apparently are designed to take care of this problem some time subsequent to the approval of this merger. Viewing this matter from another angle, it appears to me that the roof of the building has been completed and that the foundation and side walls will now have to be constructed.

COMMISSIONER HARDIN did not participate.

APPENDIX A

THE MAJOR PROPOSALS

The Northern Lines merger.—Pursuant to the terms of an agreement of merger dated January 26, 1961, between New Company and its directors, Great Northern and a majority of its directors, Northern Pacific and a majority of its directors, and Pacific Coast and a majority of its directors, and as approved by appropriate resolutions adopted by the boards of

directors of New Company, Great Northern, and Northern Pacific on January 26, 1961, and by the board of directors of Pacific Coast on February 6, 1961, and by appropriate resolutions adopted by stockholders at meetings held by them, by affirmative vote of 73.81 percent (4,422,600 shares) of the outstanding shares of capital stock (6.64 percent, or 397,949 shares, voting against the proposals) of Northern Pacific on April 27, 1961, by affirmative vote of 81.03 percent (4,929,931 shares) of the outstanding shares of capital stock (0.17 percent or 10,491 shares, voting against the proposals) of Great Northern on May 11, 1961, by affirmative vote of 100 percent of the outstanding shares of capital stock of New Company on May 11, 1961, Great Northern, Northern Pacific, and Pacific Coast would be merged into New Company. * * *

New Company would continue after the Northern Lines merger is effected as the surviving company, a Delaware corporation, exclusively. Its authorized capital stock would, on the Northern Lines merger date, be reclassified and increased from 200 shares without par value to 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, and the outstanding shares of capital stock of Great Northern and Northern Pacific would be converted under the Northern Lines merger into capital stock of the New Company, as follows: (a) each share of capital stock of Great Northern outstanding in the hands of the public immediately prior to the Northern Lines merger date

would be converted into one share of common stock and one-half share of preferred stock of the New Company, and (b) each share of capital stock of Northern Pacific outstanding in the hands of the public immediately prior to the Northern Lines merger date would be converted into one share of common stock of the New Company. * * *

* * * *

The Northern Lines merger agreement further provides that upon the effective date of the Northern Lines merger, New Company would become possessed of all the rights, privileges, powers, and franchises (except any franchise to be a corporation of any State other than the State of Delaware), would be subject to all the restrictions, disabilities and duties of the constituent corporations, and all and singular, the rights, privileges, powers and francises of each of them, and all properties and all debts due any of them would be vested in the New Company and would be thereafter as effectually the property of New Company as such were formerly the property of any of the constituent corporations and without further act or deed New Company would succeed to title to the real estate interests of each company, would be responsible and liable for all the debts, liabilities and duties of the constituent corporations and would be substituted in their stead as the party of interest in any existing claims or actions by or against either of the constituent corporations, assume all obligations and liabilities of Great Northern and Northern Pa-

cific in respect of securities outstanding; and rights of creditors and all liens upon properties of any of constituent corporations would be preserved unimpaired and all debts and liabilities of constituent corporations would attach to New Company and may be enforced against it to the same extent as if incurred by it. New Company would assume all contracts, mortgages, deeds of trust and indentures made by Northern Pacific, Great Northern, or Pacific Coast or their predecessors and other supplements and amendments thereto and all bonds and other obligations secured thereby.

The Northern Lines merger agreement further provides that neither Northern Pacific nor Great Northern, without the consent of the other, shall, prior to merger date of the termination of the agreement (a) declare dividends in excess of $2.60 per share per annum in the case of Northern Pacific, and $3 per share per annum in the case of Great Northern, or declare any stock dividend or make any other distribution on its capital stock, or make any purchase thereof at a price in excess of the then current market price; (b) issue or sell any shares of its authorized but unissued capital stock (except that Northern Pacific may issue shares to satisfy restricted stock options outstanding as of July 15, 1960) or any security convertible into capital stock, or issue or grant any option or warrant to purchase capital stock except those issued or granted pursuant to its restricted stock option plan in effect on January 26, 1961, each to have at Northern Lines merger date in its treasury shares of its own stock

at least equal in number to the number of shares then optioned under its plan, except in the case of Northern Pacific, shares optioned on or before July 15, 1960; or (c) sell any of its treasury stock except to satisfy restricted stock options.

The Northern Lines merger agreement further provides that New Company will take such action as may be appropriate so that after the Northern Lines merger date (a) holders of option agreements entered into pursuant to the Northern Pacific restricted stock option plan shall be entitled to purchase one share of New Company common stock for each share of Northern Pacific stock subject to such option agreements, for the same price and upon the same terms and conditions stated in such option agreements, and (b) holders of warrants issued pursuant to Great Northern restricted stock option plan shall be entitled to purchase one share of New Company common stock and one-half share of New Company preferred stock (or such other number of shares of such common stock or preferred stock or both or on such terms as shall be required to avoid modification of the options within the meaning of the Internal Revenue Code) for each share of Great Northern stock subject to such warrants, for the same aggregate price and upon the same terms and conditions (subject to appropriate provision with respect to fractional shares and except as such terms and conditions may be altered avoid modification of the options as aforesaid) stated in such warrants. It further provides that following the Northern Lines merger date no options would be

granted under the Northern Pacific restricted stock option plan or the Great Northern stock option plan.

* * * *

Pursuant to resolution adopted at a meeting of holders of more than two-thirds of the principal amount of bonds outstanding under Northern Pacific collateral trust indenture, dated October 1, 1954, held April 20, 1961, there was approved an amendment of the indenture to be effected by a supplemental indenture permitting the substitution of New Company's consolidated mortgage 4-percent bonds, series A, due 1984, for Northern Pacific refunding and improvement mortgage bonds, series E, due July 1, 2047, as collateral security thereunder, and the elimination of certain sections of the collateral trust indenture.

The Northern Lines merger agreement is in conventional form to effect a statutory merger under Delaware law. In the statutory merger, the surviving company, here New Company, a party to the agreement and an applicant, organized in Delaware to become the surviving corporation in the unification, now a subsidiary of Great Northern and Northern Pacific would remain so until the Northern Lines merger is effected, whereupon it would by operation of law become the corporate successor of Great Northern, Northern Pacific and Pacific Coast, which would cease to exist as separate corporations, would issue its stock for the assets, properties and franchises of the companies being liquidated and assume all of their obligations. * * *

The Burlington merger.—Pursuant to the terms of another agreement of merger also dated January 26, 1961, entered into between New Company and its directors and Burlington and a majority of its directors, as approved by appropriate resolutions of their respective boards of directors on January 26, 1961, and as approved by appropriate resolutions adopted by stockholders at meetings held by them, by affirmative vote of 100 percent of the outstanding shares of capital stock of New Company on May 11, 1961, and by affirmative vote of 99.5 percent (1,700,463 shares) of the outstanding shares of capital stock (0.02 percent or 310 shares voting against the proposal) of Burlington on May 3, 1961, Burlington would be merged into New Company. * * *

New Company would continue after the merger as the surviving company, a Delaware corporation exclusively. Its authorized capital stock on the Burlington merger date, as on the Northern Lines merger date, would be 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, and the outstanding shares of capital stock of Burlington in the hands of the public would be converted under the Burlington merger agreement into capital stock of New Company, as follows: each share of stock of Burlington outstanding immediately prior to the Burlington merger date (other than such shares as are then owned by New Company) would be converted into three and one-quarter shares of common stock of the New Company. All shares of the capital stock of Burlington owned

by New Company and any treasury shares of Burlington would be retired and canceled and no shares of capital stock or other securities of New Company would be issued in respect thereof, and the separate corporate existence of Burlington would be terminated on the Burlington merger date.

* * * *

The Burlington merger agreement contains similar provisions in respect of merging of assets and assumption of liabilities of Burlington into New Company on the Burlington merger date as previously described under the Northern Lines merger.

The Burlington merger agreement further provides (1) that after the Northern Lines merger agreement shall become effective, Burlington will, subject to necessary approvals of regulatory authorities, sell to New Company $70 million principal amount of its first and refunding mortgage series of 2010 4-percent bonds, to be issued under and pursuant to Burlington's first and refunding mortgage dated February 1, 1921, at a price in cash of $70 million, plus accrued interest (if any) on such bonds to date of sale, such sale to be made prior to the merger date as New Company may appoint but not before the effectiveness of the merger provided for in the Northern Lines merger agreement, and such sale by Burlington would be a condition to the obligation of New Company to consummate the Burlington merger agreement, and (2) that New Company would purchase such bonds and immediately thereupon pledge same under New Company's new consolidated mortgage to be executed and delivered

to it, subsequently discussed herein with more particularity. In that connection, in the event of merger, the $17,632,000 principal amount of Northern Pacific refunding and improvement bonds series A would be redeemed and canceled.

* * * *

The SP&S lease.—Under the terms of a proposed indenture of lease, between SP&S and New Company, which was approved by the boards of directors of Great Northern, Northern Pacific and New Company on January 26, 1961, and by the board of trustees of SP&S on February 7, 1961, and by appropriate resolution adopted by the stockholders of New Company at a meeting held May 11, 1961, and by appropriate resolution adopted by the stockholders of SP&S on May 10, 1961, SP&S would lease all of its properties and assets, including investments, current assets and after-acquired property to New Company for a term of 10 years from and after the effective date of the lease, except SP&S's franchises to be a corporation and its corporate books and records, to the extent required for its proper performance of the terms and conditions of the lease, such lease of properties and assets subject to (a) lien of SP&S first mortgage, dated March 1, 1911, and all amendments and supplements thereto and extensions thereof, and the lien of any other mortgage or mortgages which may, with the written consent of the lessee, be placed on the lease property on any part thereof, in replacement of the said first mortgage, after the effective date of the

lease; (b) the lien of SP&S's equipment trust and conditional sale agreements specified in the lease; and (c) all other mortgages, trusts and other encumbrances upon affecting the demised premises existing on the effective date of the lease or thereafter created or entered into by SP&S with the consent of lessee.

The lease indenture further provides that lessee would pay as rent for the lease: (a) all obligations reasonably incurred by lessor to preserve the franchises and corporate existence of lessor; (b) all taxes, assessments, and other governmental charges (with right of reimbursement from lessor for those chargeable to capital account) lawfully levied or assessed against the leased property or the earnings or income thereof, or against the lessor or the lessor's interest in the lease or the income received by lessor, or paid for its account, under the lease; (c) all rental and other charges (with right of reimbursement from the lessor for those chargeable to capital account) for which lessor may be liable in respect of trackage and other rights included in the leased property or acquired by the lessor with the approval of the lessee; (d) all interest, including current amortization of discount and expense, accruing on bonds, notes or other obligations in respect of which the lessor is liable, except such obligations as are owned by the lessee or its successors or nominees; and (e) amounts payable as pension benefits under the lessor's existing pension plan to persons, and widows of such persons, on or entitled to be on its pension rolls on the effective date of the lease.

Additionally, lessee would pay, or account for amounts equal to deductions or similar allowances which would pay, or account for amounts equal to deductions or similar allowance which lessee is entitled to claim for each calendar year under the Internal Revenue Code for depreciation, depletion or amortization in respect of the leased property, for retirement or abandonment of depreciable, depletable or amortizable property constituting part of the leased property solely on account of casualty, obsolescence, or other cause not adequately provided for in determining the rates of depreciation, depletion or amortization, and for retirement or abandonment of nondepreciable leased property.

* * * *

The lease indenture further provides that lessee would be obligated to operate and maintain the leased property at its own expense, and to perform all covenants, terms, and conditions to be performed by the lessor under any lease, trackage or other agreement, mortgage, indenture or other instrument in force at the lease date or thereafter entered into by lessor with approval of lessee. Lessee would also be obligated to pay for the account of lessor, with right of reimbursement, all liabilities arising out of lessor's operation of the leased property prior to the lease date and the principal when due on all bonds, notes and other obligations or evidences of indebtedness in respect of which lessor is liable other than those held by lessee.

The lease indenture further provides that lessee may, for the account of lessor with right of reim-

bursement, add to, better improve or extend the leased property, and acquire other property, of whatever character, which lessee should deem in the lessor's interest for lessor to acquire, and subject to account to lessor for the net cash proceeds, abandon, retire, sell, exchange or otherwise dispose of any of the leased property. Subject to certain provisions for account to lessor, lessee may exercise all right of lessor with respect to all securities and investments of lessor included in the leased property, including the right to receive all dividends and interest thereon, to exercise voting rights, and to dispose of or encumber such property.

It further provides that for the purpose of refunding obligations of lessor, and financing or reimbursing lessee for payments of principal and sinking funds on obligations of lessor, capital expenditures in respect of the leased property, and other expenditures for the account of lessor, the latter would issue and deliver to lessee at its request bonds, notes or other obligations or evidence of indebtedness, subject to any necessary governmental approval; also for joinder by lessor in extensions or other modifications of bonds, notes or other evidences of indebtedness which in the judgment of lessee can be procured on terms reasonable and in the interest of lessor.

Provision is made for surrender and delivery of the leased properties to lessor upon termination of the lease by lapse of time or default, for termination upon default under any mortgage or other lien on the leased property requiring that a lease of lessor's property

shall be terminable on such default, and for an accounting and settlement between the parties.

* * * *

THE RELATED PROPOSALS

Acquisition of interests in subsidiaries or affiliates. —Coincidentally with consummation of the Northern Lines merger, New Company would acquire through stock ownership, such sole or joint control, as the case may be, of other carriers as well as all direct or indirect interests which those carriers have in other carriers or their properties, and other properties, which Great Northern and Northern Pacific might hold immediately prior to consummation of that transaction.

Similarly, with subsequent consummation of the Burlington merger, and coincidentally therewith, New Company would acquire through stock ownership, such sole or joint control, as the case may be, of other carriers as well as direct or indirect interests which those carriers have in other carriers or their properties, and other properties, which Burlington might hold immediately prior to consummation of that transaction.

Coincidentally with consummation of the SP&S lease transaction, New Company would acquire for the duration of the lease term, such sole or joint control, as the case may be, of other carriers as well as all direct or indirect interest which those carriers have in other carriers or their properties, and other properties, which SP&S might hold immediately prior to consummation of the lease transaction. In addi-

tion, New Company would also acquire on the effective dates of the respective merger transactions and on the date of the lease transaction, all the direct and indirect interest which those carriers have in other carriers and other significant companies.

Acquisition of motor carrier operations.—A significant aspect of the proposal in the aggregate involves the motor carrier subsidiaries of applicants and motor carrier operations related thereto. Following approval and consummation of the Northern Lines merger transaction, New Company would acquire (1) among the assets and properties of Great Northern (a) certificates of public convenience and necessity in the name of Great Northern authorizing the conduct of motor common carrier operations in interstate or foreign commerce in the transportation of property and passengers, and (b) the capital stock of S&DT, a wholly owned subsidiary motor common carrier of property, and (2) among the assets and properties of Northern Pacific, the capital stock of NP Transport, a wholly owned subsidiary motor common carrier of property and passengers. * * * Following approval and consummation of the Burlington merger transaction, New Company would acquire among the assets of Burlington (a) certificates of public convenience and necessity in the name of Burlington authorizing the conduct of motor carrier operations in interstate or foreign commerce in the transportation of property and passengers, * * * and (b) the capital stock of BTL, a wholly owned subsidiary motor common carrier of property. * * *

* * * *

The motor carrier rights of Burlington are limited. The routes do not connect with each other or with Great Northern's routes. Burlington's motor carrier rights were obtained by the railroad at the time certain train service was removed. Some authorize the transportation of passengers, mail, express and baggage; others authorize the handling of head-end traffic or, in some instances, general commodities. Burlington provides some of those services with its own employees. Some of those services are provided by its wholly owned subsidiary BTL under contract. Most of Burlington's certificates are restricted to service which is auxiliary to or supplemental of rail service.

Great Northern's operations as a motor common carrier of general commodities generally parallel its lines of railroad in Montana east and south of Whitefish, with a few scattered operations in Oregon, North Dakota and Minnesota, and as a motor common carrier of passengers in Montana and North Dakota. Most of Great Northern's certificates are restricted to service which is auxiliary to or supplemental of rail service.

The motor carrier rights now held by Burlington and Great Northern would be acquired directly by New Company through the two merger proceedings as part of the assets of those companies. The Burlington rights do not authorize service nor do the operations connect at any point served by Great Northern—as they involve operations in widely different and unrelated areas.

The capital stock of the three subsidiaries BTL, NP Transport and S&DT, wholly owned by Burling-

ton, Northern Pacific and Great Northern, respectively, are part of the general properties to be acquired by New Company as reflected in the application for authority herein whereby New Company would acquire control of carriers subsidiary to Great Northern, Northern Pacific and Burlington. No change in the separate corporate identity of those subsidiaries of the service performed by them is contemplated.

* * * The authority held by S&DT is limited to service which is auxiliary to or supplemental of rail service. Virtually all of BTL's operating authority is unrestricted in that respect. The operations of NP Transport in Idaho, Washington, Oregon and a small segment of route in Montana west of Missoula are subject to restriction of service auxiliary to or supplemental of rail service, but the remainder of NP Transport's operating authority, with some exceptions, is unrestricted. NP Transport's operating authority, unlike those of BTL and S&DT include rights to transport passengers.

* * * *

Acquisition of trackage rights.—As previously indicated, Great Northern, Northern Pacific, Burlington and SP&S each hold trackage rights to operate over lines of other railroads and utilize jointly with other lines common terminals or passenger station facilities. New Company would, under the transactions here in addition, on the day of merger in each of the merger transactions, and on the day of lease on the date the lease transaction is consummated, acquire among the assets of the named carriers from the other

applicant companies and in the case of the SP&S during the term of the lease, such property rights. Moreover, other agreements in effect permit use by other lines of portions of the lines of certain applicants, the obligations of which New Company would assume. All such trackage rights and joint use agreements * * * and the terms of those agreements, covering such rights generally are in standard form and provide for payments on a user basis.

* * * *

Securities transactions

Issuance of stock.—As previously indicated, New Company has outstanding 200 shares of common capital stock, no par value, owned 100 shares each by Great Northern and Northern Pacific. Under the Northern Lines merger agreement, and subject to consummation of the transaction covered thereby, those shares would be retired and canceled upon accomplishment of that merger transaction and the authorized capital stock of New Company would be reclassified and increased to 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, for the issue of which New Company seeks authority under section 20a.

Preferred stock.—The preferred stock would be fully paid and nonassessable, have a par value of $10 per share, and be entitled to fully cumulative dividends, payable quarterly, at the rate of 5½ percent per annum, and no more, when and as declared by the board of directors out of funds legally available

therefor, and to the benefit of cumulative mandatory sinking fund for its retirement, and no dividends would be declared or paid on the common stock unless dividends at the rate of 5½ percent per annum, and no more, including arrearages, have been paid or declared, and funds sufficient to pay the same have been set aside for that purpose, and the requirements of the mandatory sinking fund with respect to preceding calendar year and all deficiencies, if any, in the mandatory sinking fund for prior calendar years have been satisfied.

On and after the fifth year following accomplishment of the Northern Lines merger and continuing so long as any preferred stock is outstanding, New Company, as and for a mandatory sinking fund, for preferred stock, out of net assets legally available therefor after payment of dividends on the preferred stock, would retire shares of the preferred stock at an annual rate of 4 percent of the total par value of such preferred stock issued on the merger through redemption or cancellation of such shares of preferred stock theretofore purchased by it at or below par value plus accrued dividends, (such purchase shares to be valued for sinking fund purposes at par), or both. New Company may at its election, (any deficiency in the mandatory sinking fund for prior year having been made up), as and for an optional sinking fund in any one or more of such calendar years, so to redeem or cancel shares of such preferred stock theretofore purchased by it, or both, up to but not in excess of an additional 4 percent of the total par value of the preferred stock issued on the merger, and the aggregate

of amounts by which mandatory sinking fund requirements have been so anticipated in any year or years may be credited against such sinking fund requirements for subsequent years; provided that in no event would New Company be relieved for more than 2 consecutive calendar years from the mandatory sinking fund requirement of purchasing and canceling or of redeeming, or both, in each calendar year 4 percent of the total par value of preferred stock issued on the merger. Preferred stock would be redeemable for sinking funds purposes at par plus accrued dividends.

New Company may at its option redeem the preferred stock on and after the fifth year after Northern Lines merger consummation date at the following percentages of par plus accrued dividends thereon: In the first 2 years thereafter, 105 percent; in the next 2 years, 104 percent; in the next 2 years, 103 percent; in the next 2 years, 102 percent; in the next 2 years, 101 percent, and thereafter, 100 percent.

In the event of liquidation preferred stockholders would be entitled to receive before any payment on the common stock the then applicable optional redemption price previously described under certain conditions, otherwise its par value plus accrued dividends. New Company may not voluntarily liquidate without approval of the holders of a majority of the preferred stock.

At any time when dividends are in arrears on the preferred stock, New Company may not redeem less than all of the preferred stock without approval of the holders of two-thirds of the preferred stock, or purchase any preferred stock except upon offer to all

holders of preferred stock. Holders of preferred stock would not be entitled to vote on any matter, except as provided by the laws of Delaware, and except in event dividends are in arrears in aggregate amount equal to six quarterly dividends, in which event holders of preferred stock would be entitled, voting as a class, to elect two directors at the next annual meeting, which voting rights would continue until such time as such arrearages have been paid, and New Company may not authorize the issue of any stock entitled to dividends to share in liquidation in priority to the preferred stock, and may not otherwise amend its certificate of incorporation in any way adversely affecting interests of preferred stockholders without approval by holders of two-thirds of the preferred stock, but no vote of the preferred stock would be required to increase the authorized amount of preferred stock or create one or more classes of preferred stock so long as such class or classes rank subordinate to the preferred stock either as to dividends or liquidation.

Common stock.—The common stock of New Company proposed to be issued under the merger agreements would be fully paid and nonassessable, entitled to dividends, subject to the previously described conditions concerning the preferred stock, when and as declared by the board of directors of New Company, out of funds legally available therefor, and entitled to one vote per share for directors and on all other matters.

Upon the Northern Lines merger consummation date, each share of Great Northern stock then out-

standing in the hands of the public would be converted into one share of common stock and one-half share of preferred stock of New Company, and each share of Northern Pacific stock then outstanding in the hands of the public would be converted into one share of common stock of New Company. No new securities would be issued in respect of the shares of common stock of Pacific Coast. No fractional shares of New Company's preferred stock or scrip certificates therefor would be issued in respect of conversion of the shares of Great Northern common stock, but in lieu thereof provision is made to enable stockholders entitled to fractional interest to either sell such fractional interest or purchase such additional fractional interest necessary to entitle such stockholder to a full share of preferred stock. No new securities would be issued in respect of Great Northern's common stock then held in its treasury, or in respect of directors' qualifying shares. New Company would reserve out of its authorized capital stock (a) sufficient shares of its common stock and preferred stock to satisfy options granted under Great Northern's restricted stock option plan, and (b) sufficient shares of its common stock to satisfy options granted under the Northern Pacific restricted stock option plan, and, in each case, which may be outstanding on the Northern Lines merger consummation date.

Upon the Burlington merger consummation date, each share of Burlington common stock outstanding in the hands of the public would be converted into three and one-quarter shares of common stock of New Company. No new securities would be issued in re-

spect of shares of Burlington common stock owned by Great Northern and Northern Pacific or then held in Burlington's treasury. No fractional shares of New Company's common stock or scrip certificates therefor would be issued in respect of Burlington common stock. In lieu thereof, fractional interests would be treated similarly so that provided for the preferred stock issuable upon conversion of Great Northern common stock.

* * * *

Issuance of bonds.—In the proposed program of unification, there are presented two separate and distinct requests for authority to issue bonds; one by Burlington, the other by New Company. * * *

Subsequent to consummation of the Northern Lines merger, and prior to consummation of the Burlington merger and execution of the supplemental indenture whereby New Company would assume the Burlington mortgage, Burlington would issue and sell to New Company $70 million principal amount of its first and refunding mortgage series of 2010 4-percent bonds. These bonds would be issued under and secured by Burlington's first and refunding mortgage, dated as of February 21, 1921, under which The First National City Bank of New York and Jacob M. Ford II are trustees in part for the surrender for cancellation of $10,140,000 principal amount of first and refunding mortgage 4½-percent bonds, series of 1970, due August 1, 1970, and $19,729,000 principal amount of first and refunding mortgage 4-percent bonds, series of 1998, due February 1, 1998, now held in

Burlington's treasury, and the balance of $40,131,000 on account of additions and betterments to the property subject to the lien of the mortgage.

The Burlington bonds would be dated on the interest payment date next preceding the date of authentication, would bear interest at 4 percent per annum payable semiannually on the first days of February and August of each year, would mature on the first day of August 2010, would be issued in the principal amount of not to exceed $70 million would be issued as coupon bonds in the denomination $1,000 or as registered bonds without coupons in denomination of $1,000 or any multiple thereof, interchangeable as to form, would be payable at the office or agency of Burlington in New York, and would be redeemable before maturity on any interest date on 9 weeks' published notice at their principal amount and accrued interest. No sinking fund would be provided for the redemption of payment of the series 2010 Burlington bonds or any part thereof. The series of bonds would not be converted into shares of capital stock of Burlington. The sale of the bonds would be made for cash at par and accrued interest, if any. * * * As regards the problem of conflict of liens, it is noted that, as indicated, Great Northern and Northern Pacific each own 830,179 shares, or 48.59 percent of the issued and outstanding shares of Burlington. Of the shares owned by Great Northern, 829,337 are pledged as security under Great Northern's general gold bond mortgage; and of the shares owned by Northern Pacific, 829,337 are pledged as security under Northern Pacific's refunding and improvement mortgage. Each

mortgage permits consolidation or merger with the mortgagor or of a company whose stock is pledged thereunder, but requires that upon such consolidation or merger all of the properties of the company whose stock is pledged shall be subjected to the lien of the mortgage. Such provisions would, of course, require that upon merger of Burlington all of the property of Burlington be subject to the lien of both mortgages. Because the provisions conflict and are obviously inconsistent, they could not both be satisfied. Accordingly, to effect the proposal, it would become necessary to satisfy and discharge one of the mortgages prior to merger of Burlington with the parent companies.

* * * *

The issue and sale by bonds of Burlington to New Company is designed to (1) enable the latter to pledge the bonds under its proposed-to-be-created consolidated mortgage, subsequently discussed, and strengthen materially the security for the consolidated mortgage, and (2) preserve the bonding power presently available in the Burlington properties. Upon pledge of the bonds by New Company under the consolidated mortgage, that mortgage would become an indirect lien on the Burlington properties, and upon the subsequent accomplishment of the merger transactions, no further bonds would be issuable under existing Northern Pacific, Great Northern and Burlington mortgages, except (1) Burlington bonds for the purpose of pledge under the Great Northern general mortgage, and (2) Great Northern bonds for the purpose of pledge under the consolidated mortgage. However,

the Burlington first and refunding mortgage would be closed against any public issue of additional bonds by the provisions of the Great Northern general gold bond mortgage to which the Burlington properties would be subject.

* * * *

In order that New Company be provided with a satisfactory financing vehicle, the proposal in the aggregate contemplates, among other things, that a new, modern, flexible, and systemwide consolidated mortgage covering generally the railroad properties of the three principal railroad applicants be created by New Company, which consolidated mortgage would be strengthened by the pledge under it prior to the Burlington merger of $70 million principal amount of Burlington first and refunding mortgage bonds presently issuable under that mortgage. Upon effecting the Burlington merger, that mortgage would be closed against any public issue of additional bonds by the provisions of the Great Northern gold bond mortgage to which the Burlington properties would be subject.

If bonds issued under the consolidated mortgage were to be substituted for the Northern Pacific series E bonds now pledged under the Northern Pacific collateral trust indenture, the consent of the holders of two-thirds of the Northern Pacific collateral trust bonds would be required, because the consolidated mortgage would not have a lien equivalent to that of the Northern Pacific refunding and improvement mortgage on the properties of Northern Pacific, the Burlington stock would disappear and the Great Northern general gold bond mortgage would be a lien

on the Burlington properties prior to the consolidated mortgage.

In summary, the consolidated mortgage, upon completion of the unification program, would be secured by a lien on the properties of New Company generally as follows: (a) after the Northern Lines merger transaction has been accomplished by (1) a lien on the railroad properties of Northern Pacific equivalent to the lien which presently secures the Northern Pacific refunding and improvement mortgage, being a first lien on approximately 1,390 miles (principally branch lines) and a third lien on the balance, and (2) a second lien on the railroad properties of Great Northern (other than the Klamath Falls division) which are subjected to the first lien of the Great Northern general mortgage, and (b) after the Burlington merger transaction has been accomplished by (1) a third lien on the railroad properties of Burlington which are the subject to the first lien of the Burlington first and refunding mortgage and further subject to the lien of the Great Northern general mortgage, to which latter mortgage as of the date of accomplishment of the Burlington merger transaction such Burlington properties would be subjected, and (2) an indirect first lien on such Burlington properties through the pledge of the $70 million principal amount of Burlington first and refunding mortgage bonds. After unification, no further bonds will be issuable under existing Northern Pacific, Great Northern and Burlington mortgages except Burlington bonds for the purpose of pledge under the Great Northern general mortgage and Great Northern bonds

for the purpose of pledge under the consolidated mortgage.

The New Company series A consolidated mortgage bonds are proposed to be issued under and secured by the New Company consolidated mortgage creating such series and authorizing such bonds to be authenticated and delivered as per draft of record, under which the trustees would be Morgan Guaranty Trust Company of New York and such individual trustee as may be required by law. The bonds would be pledged under the Northern Pacific collateral trust indenture, would mature October 1, 1984, would bear interest at the rate of 4 percent per annum, payable semiannually on April 1 and October 1 of each year, would be issued as coupon bonds in the denomination of $1,000 or as registered bonds without coupons in the denomination of $1,000 or any multiple thereof, interchangeable as to form, would be payable at the office or agency of New Company in New York, N. Y., and would be subject to redemption at any time as a whole at the option of New Company at 102 percent of their principal amount to and including July 1, 1965, thereafter at 101 percent of their principal amount to and including July 1, 1970, and at 100 percent of their principal amount thereafter, in each case with accrued interest to date of redemption.

In addition to providing for issuance of the series A consolidated mortgage bonds for purpose above described, the major provisions for such issuance of bonds would permit issuance as follows: (1) at any time in aggregate principal amount equal to aggregate principal amount of Great Northern general

mortgage bonds issuable under Great Northern general mortgage on the latest practicable date prior to Northern Lines merger and of Northern Pacific refunding and improvement bonds which would have been issuable under Northern Pacific refunding and improvement mortgage on such date (considering as to latter restrictions imposed by Northern Pacific collateral trust indenture on further issuance under the Northern Pacific refunding and improvement mortgage), * * * (2) $70 million principal amount of bonds at any time after discharge of the Northern Pacific collateral trust indenture and cancellation of the series A consolidated mortgage bonds, (3) for refunding debt having a prior lien on property subject to the consolidated mortgage, as well as for purpose of refunding previously issued series of consolidated mortgage bonds, other than series A bonds, and (4) for purpose of providing for 75 percent of cost of acquisition (subject to adjustments) of additions and betterments, additional lines of railroad and other transportation lines, other property, and of common stock of companies owning properties of such character which as of the date of issuance of consolidated mortgage bonds are more than 50 percent owned subsidiaries whose common stock is subject, or is to be subjected to, the consolidated mortgage, such acquired common stock to be subjected to the consolidated mortgage which would be a first lien thereon.

* * * *

Simultaneously with accomplishment of the Burlington merger transaction, the proposal contemplates

satisfaction of the Northern Pacific refunding and improvement mortgage. In order to secure satisfaction of that mortgage, New Company would (1) issue, and with consent first obtained of the holders of two-thirds of the Northern Pacific collateral trust bonds, pledge its consolidated mortgage 4-percent bonds series A due 1984, in aggregate principal amount not to exceed $71,500,000 under the Northern Pacific collateral trust indenture in order to secure release of an equivalent principal amount of Northern Pacific refunding and improvement bonds then pledged under such indenture * * *; (2) cancel and retire such Northern Pacific refunding and improvement bonds when released from the pledge; and (3) call for redemption of all of the then publicly held Northern Pacific refunding and improvement bonds and deposit with the trustee of the Northern Pacific refunding and improvement mortgage funds sufficient to effect such redemption at a price of 110 plus accrued interest.

Modification of indenture.—The pledge of the series A consolidated mortgage bonds of New Company in substitution for and the release of the Northern Pacific refunding and improvement mortgage bonds, would be effected under a supplemental indenture to the collateral trust indenture. The bonds, authority for which modification and alteration is sought, are Northern Pacific collateral trust 4-percent bonds, of which not exceeding $52,000 principal amount, due October 1, 1984, were authorized to be issued under and pursuant to, and secured by a collateral trust indenture dated October 1, 1954, between Northern Pa-

cific and the First National Bank of the City of New York, trustee, pursuant to authority granted in Finance Docket No. 18644, *Northern Pacific Railway Company Bonds*, 290 I.C.C. 816, decided October 13, 1954. The bonds mature October 1, 1984, bear interest at 4 percent per annum payable semiannually April 1 and October 1 of each year, are redeemable upon not less than 30 days' nor more than 60 days' notice at option of Northern Pacific, as a whole or in part at any time prior to maturity, and are entitled to the benefit of a sinking fund annually of $1,300,000 for the years 1960-1964, inclusive, and of $1,560,000 for the years 1965-1969, inclusive. * * *

* * * The proposed supplemental indenture to permit the substitution of consolidated mortgage bonds for the pledged series E bonds, and amendment of the collateral trust indenture in other respects was approved at a meeting of the collateral trust bondholders held April 20, 1961, by affirmative vote of holders of approximately 88.77 percent in aggregate principal amount of the collateral trust bonds outstanding; no votes were cast against such proposal.

* * * *

Summarizing, the previously described phase of the unification proposal would be accomplished as follows: Upon consummation of the Northern Lines merger transaction, New Company would purchase for cash from Burlington $70 million principal amount of Burlington bonds; New Company would then execute its consolidated mortgage on the railroad properties of Great Northern and Northern Pacific and pledge the

new Burlington bonds thereunder; New Company would then issue under the consolidated mortgage and pledge under the Northern Pacific collateral trust indenture, in substitution for the pledged Northern Pacific $71,500,000 principal amount series E bonds, an equal principal amount of its series A consolidated mortgage bonds; and New Company would then cancel the series E bonds and deposit with the trustee of the Northern Pacific mortgage sufficient cash to redeem all of the publicly held Northern Pacific bonds. Thereafter, the Burlington merger transaction would be accomplished, Burlington would be merged into New Company, the Burlington properties would be subjected to the lien of the Great Northern mortgage, and then to the lien of the new consolidated mortgage.

Assumption of obligations.—Concurrently with consummation of the Northern Lines merger agreement, New Company proposes to assume all obligations and liability of Great Northern and Northern Pacific in respect of securities outstanding on the effective date of the merger. The obligations of Great Northern and Northern Pacific as of the latest available date of record consist of bonds secured by encumbrances on their properties, equipment obligations, and guarantees of the obligations of other companies. Pacific Coast has no secured or contingent liabilities. * * *

Other related assumption of liability.—In connection with the major and related transactions described for which authority is sought and required, New Company would also assume obligations of the merging carriers in respect of pension fund service liability. While such assumption of liability does not require au-

thority from this Commission, it is part and parcel of the transaction, is pertinent and should be discussed. Great Northern has had in effect a pension plan for the past 44 years. Participation in the plan is limited to salaried employees who are employed on a monthly basis and who are not compensated for overtime. The plan may be terminated and discontinued at any time by Great Northern through action of its board of directors with approval of stockholders. Participants in the plan may be eligible at retirement for pension benefits computed by multiplying the participant's years of continuous service by 1½ percent of the average salary received during his last 60 months of compensated employment, less the annuity received under the Railroad Retirement Act, as amended. Pension benefits are limited to a maximum of 60 percent of the average earnings received during the last 60 months of compensated employment prior to retirement. The plan provides that a widow of a deceased participant will be entitled to benefits equal to one-half of the benefit computed under the plan for her husband, without deduction of the husband's Railroad Retirement annuity, but with deduction of the amount received by the widow as an annuity under the Railroad Retirement Act, as amended.

* * * *

Northern Pacific has had a pension system since 1922, limited, with exceptions, to salaried employees paid on a monthly basis and not regularly compensated for overtime, under which pensions were charged to expenses as paid. Effective December 1, 1960, the plan was modified and placed on a funded

basis with respect to those previously retired and certain others, including eligible widows of deceased employees and pensioners. Under the funded plan, which may be terminated or modified by Northern Pacific at any time, such salaried employees may be eligible at retirement for pensions computed by multiplying the individual's allowable years of employment by 1⅜ percent of the average of the 5 highest paid years during the last 10 years immediately preceding retirement but prior to age 70 and deducting therefrom 85 percent of the annuity payable to him under the Railroad Retirement Act, as amended, subject to certain specified limitations.

* * * *

Burlington has had a pension system since 1922, under which pensions are charged to expenses as paid. Under the plan as amended by its board of directors, effective January 1, 1952, which may be terminated or further modified by Burlington at any time, officers and certain employees (but not directors, as such), may be eligible at retirement for pensions computed by multiplying the individual's years of employment, but not in excess of 40 years, by 1½ percent of his average monthly earnings received during the 5 years immediately preceding retirement but prior to age 70 after deducting therefrom the annuity payable to him under the Railroad Retirement Act, as amended. Pension benefits are limited to a maximum of 60 percent of the average earnings received during the last 5 years of compensated employment prior to retirement. The plan further provides that the widow of a deceased officer, employee or pensioner, meeting the re-

quirements of eligibility, will receive a benefit equal to one-half her husband's pension which would have been payable under Burlington's pension system, but for his death.

* * * *

The record indicates that it has been agreed that pension benefits payable in accordance with the provisions of the several pension plans of Great Northern, Northern Pacific and Burlington, described in capsule form above, and those of SP&S and Pacific Coast to persons on or entitled to be on their pension rolls when the unification is accomplished and to the widows of such persons shall thereafter be paid by the New Company to the extent that such pension benefits are not paid out of any trust fund theretofore established for the purpose. A new pension plan containing uniform provisions for the payment of benefits upon retirement to all employees of New Company eligible under the terms of existing plans, which would preserve so far as practicable without substantial impairment the provisions made in existing plans for retirement and pension of employees of the applicant companies indicated who are in active service on the date of effectuation of the unification, will be adopted by New Company. * * *

* * * *

Extension of lines of railroad.—As indicated, New Company, and SP&S to the extent of its interest as owner and lessor under proposed lease of portions of extensions described in items (19), (21), and (24), of appendix J hereto, seek authority to construct and operate the extensions of lines of railroad described in

items (1) through (24), inclusive, of appendix J. No objections to the extensions are raised. The proposed extensions, ranging in length from 303 feet to 6,568 feet, would be constructed by, would connect lines of the unified railroad, and are intended for use solely as connection between existing lines which would be operated by New Company, following, and contingent upon, approval and consummation of the major transactions here involved, particularly the Northern Lines merger. The projects are located at one point in Wisconsin, seven points in Minnesota, three points in North Dakota, one point in Montana, one point in Idaho, five points in Washington, and one point in Oregon. Construction and operation of the indicated extensions are advanced as necessary to allow trains to pass from one line to another without delay at points where, under unification, such movements would be essential to economical and efficient operation of the railroad. The new connecting lines would not affect other railroads, nor would they serve any industries or shippers not now being served by applicant railroads.

Passenger, freight, express, and switching service would be performed on all of the proposed extensions except as follows: those described in items (1), (3), (4), (5), (13), (20), (22) and (24) of appendix J would involve freight and switching service only; that described in item (23) of appendix J would involve freight and emergency line detour service. Diesel-electric motive power would be used on each of the proposed extensions. Construction of the section of 1,460 feet at Superior, Wis., would permit (a) freight

trains moving from New Company's yard at Superior to reach present Northern Pacific line to Ashland, Wis., and (b) flexibility in yard switching movements. The section of 2,260 feet at Hinckley, Minn., would permit connection of the Minneapolis-Duluth line of Great Northern with the St. Paul-Duluth line of Northern Pacific as well as flexible operations of the two lines between Hinckley and Twin Cities. The section of 303 feet at Sauk Centre, Minn., would improve flexibility of switching at that point permitting switching between the Little Falls-Morris branch line of Northern Pacific and the St. Cloud-Fargo main line of Great Northern. The section of 835 feet (400 feet constructed and 435 feet relocated) at Wadena, Minn., would improve flexibility of switching at that point to permit more economical arrangement of local freight and make possible future elimination of a railroad crossing at grade. The section of 1,375 feet (500 feet constructed and 875 feet relocated) at Breckenridge, Minn., would permit New Company to consolidate freight terminal operations at that point, improve switching facilities, and make possible elimination of existing railroad crossing at grade, for which authority is concurrently sought elsewhere herein and described in item (1) of appendix C hereto. The section of 2,035 feet at Fargo, N. Dak., would permit rerouting of passenger trains on present Northern Pacific main line through present Great Northern passenger station at that point, which latter station would be used by all passenger trains of New Company serving Fargo. The section of 1,800 feet at Moorhead, Minn., would permit unified operation of

the Fargo-Moorhead terminal area. The section of 1,480 feet at Moorhead would connect the two Great Northern Wahpeton-Moorhead and St. Cloud-Moorhead main lines, permitting (a) movement of freight trains from these lines of New Company's principal yard in Fargo area at Dilworth, Minn., on present Northern Pacific trackage, and (b) removal of approximately 2,000 feet of the Wahpeton-Moorhead line for which authority is concurrently being sought elsewhere herein and described in item (2) of appendix K. The section of 1,550 feet at Moorhead would permit the movement of freight trains from present Great Northern lines into New Company's freight yard at Dilworth. The section of 1,365 feet at Crookston, Minn., would permit improvement of switching facilities to industries located on present Northern Pacific Crookston-Grand Forks branch line. The section of 1,415 feet at Grand Forks, N. Dak., would permit improvement of switching facilities to industries located on present Northern Pacific line serviced from New Company yard on Great Northern at that point. The section of 700 feet (120 constructed and 580 relocated) at Grand Forks would permit movement of freight and passenger trains from New Company's terminal facilities (now Great Northern) to present Northern Pacific line from Grand Forks toward Grafton. The section of 5,500 feet at East Grand Forks, Minn., would permit improvement of switching services to industries located at Northern Pacific trackage at that point. The section of 2,020 feet at Casselton, Minn., would permit the through transcontinental freight trains of New Company to use present Northern Pa-

cific main line between Twin Cities and Casselton and the Great Northern main line west of Casselton. The section of 4,615 feet at Helena, Mont., would permit rerouting of through freight service between Great Falls and Butte via the more favorable line through Garrison, Mont. The section of 2,600 feet at Helena and the connecting track previously described would permit convenient access to Northern Pacific freight yards and other facilities. Construction of the two previously mentioned sections in Helena would permit removal of approximately 10,404 feet of Great Northern's line for which authority is concurrently sought elsewhere herein and described in item (3) of appendix K. The section of 3,309 feet and the section of 2,338 feet, both at Sandpoint, Idaho, would permit movement of principal transcontinental freight and passenger trains on the Great Northern line east of Sandpoint to the Northern Pacific line between Sandpoint and Spokane. The section of 6,568 feet at Spokane, including construction of bridge over Latah Creek is necessary to unify and would permit through freight and passenger facilities of Northern Pacific at Spokane. The south wye connection would join the facilities with trackage of SP&S reducing ruling grades on the line toward Pasco and Portland. The north wye connection permits Great Northern to be reached via SP&S and would reduce highway grade crossing problems in Spokane. Construction of the section would make possible removal of approximately 7.7 miles of Northern Pacific line between Spokane and Marshall, authority for which is concurrently sought elsewhere herein, and is described in item (5)

of appendix K. Upon completion of the new construction at Spokane and the connecting track at Marshall, the trains now operated over that 7.7-mile segment would be handled over tracks owned by SP&S and leased to New Company. In addition, it would make possible removal of approximately 3.5 miles of Great Northern main line, authority for which is concurrently sought elsewhere herein and is described in item (4) of appendix K. The Spokane project would permit reduction of highway grade crossing problems in the downtown area of Spokane, to the benefit of both the Spokane public and the railroads. The section of 2,700 feet at Marshall, Wash., would permit trains operated over SP&S trackage between Spokane and Marshall to proceed to or from the Northern Pacific lines at Marshall to Lewiston and Pasco. The section of 2,540 feet near Espanola, Wash., would permit connection where tracks cross at separate grades and permit more favorable route for freight trains between Spokane and the Northern Pacific Washington Central branch line. The section of 880 feet at Rosalia, Wash., would permit improved local freight service to industries in that area. The section of 4,440 feet at Henry's, Wash., would permit a favorable connection for freight movements between points on Northern Pacific main line and the Renton, Wash., area. The section of 2,320 feet at Willbridge, Oreg., would permit trains to proceed directly from the Oregon Electric and Astoria lines over nearby Willamette River bridge to Vancouver, Wash., and eliminate necessity of reverse movement in order to reach principal freight yards at that point.

At each point of connection, the rails used would conform in weight with rails of existing tracks. The construction would begin within 1 month after authority is received, and the work would be completed at the various points on different dates ranging from 6 months to 2 years after consummation of merger.

The proposed extensions would be financed through available funds in the treasury of New Company without issue of securities for that purpose following consummation of the major transactions herein. No aid, gift, grant of right of way, or other donation has been promised in connection with the proposed extensions.

With respect to the extensions described in items (19), (21), and (24) of appendix J, such construction of the portions of the extensions which are on SP&S lines would be for the account of the latter with right of reimbursement in New Company, pursuant to terms of proposed lease of properties of SP&S.

Neither applicant is connected by stock ownership, or otherwise, with any industry to be served by the lines proposed to be constructed and operated. Estimates of the costs * * * based on 1960 levels, are as follows: Total estimated cost $7,642,380.

Abandonment of lines of railroad.—As indicated, subject to consummation of the major transactions here presented, New Company, and SP&S to the extent of its interest as owner and lessor under proposed lease transaction, insofar as it relates to items (5) and (7) of appendix K hereto, seek authority to physically abandon various segments of existing lines of railroad equivalent to approximately 14.86 miles, de-

scribed in appendix K hereto, contingent upon approval and consummation of the major transactions here involved, particularly the Northern Lines merger, and, as to each abandonment, upon completion of the respective new portion or portions of line proposed to be constructed and operated, as discussed elsewhere herein. The proposed abandonments are unrelated to any decrease of freight or passenger traffic during recent years. The seven segments proposed to be abandoned range from 1,300 feet at Fort Wright, Wash., to 7.7 miles between Spokane and Marshall, Wash.

No stations are located on the portions of the lines proposed to be abandoned, and no abandonment or reduction of service to any station or territory is involved. None of the segments of line proposed to be abandoned connects with other railroads for interchange of traffic. * * *

* * * *

Retention of the segments proposed to be abandoned herein, after completion of the proposed extensions connecting existing lines described in appendix J hereto, it is advanced, would constitute an unnecessary duplication of lines within the unified transportation system of New Company. Moreover, in respect of the Spokane-Marshall segment described in item (6) of appendix K, which like the other segments serves no industries, its removal would not only save maintenance expenses for the railroad, but the State and Federal governments would be beneficiaries of savings of approximately $1 million for grade separation structures planned in the same area in connection with the interstate highway construction program. In-

quiry dealing with protection of New Company following abandonment of the 7.7 miles of track between Spokane and Marshall shows that it is present Northern Pacific trackage, that upon completion of this construction at Spokane, the trains now operated over the segment would be handled over tracks owned by SP&S and leased to New Company, that applicants conclude that since New Company would own the stock of SP&S as well as be lessee of SP&S, there should be no apprehension that SP&S might oust New Company from use of the tracks between Marshall and Spokane. While applicants contend that SP&S would continue as leased line of New Company or would be subsequently merged or consolidated, subject to approval, and that in either event New Company would continue to have full use of the tracks of SP&S, and that the Marshall-Spokane segment would not be needed, it is not a matter of immediate concern. The matter of merger or consolidation of SP&S into New Company is clearly a matter for the future, and consideration must be given to the present status of the carriers and their properties and the resulting status if these applications are approved as requested. No objections to the abandonments, however, are raised. The same transportation service now provided over the segments would continue to be provided by New Company, after abandonment of the described segments through use of and its operations over the proposed extensions described elsewhere herein. Since each of the proposed abandonments is related to and conditioned upon the construction of a new connection, the abandonments would not result in any abandon-

ment of, or reduction in, service to those points or their surrounding areas.

APPENDIX B

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of December 31, 1966, after giving effect to Northern Lines merger

NOTE

I. The combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the sum of the amounts carried and the balance sheets of the four companies as of December 31, 1966, adjusted to give effect to the merger as shown by notes below.

A. To effect net debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Pacific Coast (see note C) $240,755

B. To eliminate book investment in affiliates as follows:

Name of affiliate common stock	Amount	Held by
Pacific Coast	$1,700,000	Great Northern
G.N.P.&B. Lines, Inc	500	------ do ------
Do	500	Northern Pacific
	1,701,000	

C. To transfer to current assets credit balance in traffic and car service balances—credit (see note A) $240,755

D. To set up capitalization of New Company at time of merger equal to the sum of the stated value of the capital stock of the Great Northern ($271,404,345) and the par value (30,189,105) plus premium

($225,158,938) of the Northern Pacific outstanding in the hands of the public:

		Number of shares	Amount
Common stock—without par value:			
Northern Pacific			
$5 Par value	$30,189,105		
Premium thereon	225,158,938	6,037,836	$255,348,043
Great Northern			
Without par value		6,152,652	271,404,345
		12,190,488	526,752,388
Less preferred stock—$10 par value:			
Great Northern			
6,152,652 shares @ ½ share		3,076,326	30,763,260
Total common stock capitalization		12,190,488	495,989,128

E. To eliminate capitalization of merged companies:

Common stock actually outstanding	$302,594,525
Premium on capital stock	225,159,499

F. The $699,364 reflects adjustment giving effect to the merger of the respective roads as follows:

(1) Difference between book investment by Great Northern and par value of Pacific Coast stock liability	700,000
(2) Retirement and cancellation of fifteen (15) Northern Pacific shares of common stock held by directors as qualifying shares:	
15 shares @ $5 par value $75	
15 shares @ $37.38 premium 561	(636)
Charged to other capital surplus	699,364

G. The debit adjustment or reduction in shareholders' equity of $1,701,000 is made up as follows:

(1) Pacific Coast par value stock held by Great Northern	1,000,000
(2) Differenec between book investment by Great Northern and par value of Pacific Coast stock liability	700,000
(3) Cancellation and retirement of 200 shares of New Company, common stock upon effectuation of merger	1,000
	1,701,000

APPENDIX B

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1966, after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.

		GNP&B Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Liabilities and shareholders' equity								
	Current liabilities:								
T02	Traffic and car service balances—credit		$7,149,443	$3,788,358	$340,755	$340,755	C	$(340,755)	$10,977,801
T03	Audited accounts and wages payable		3,112,143	2,785,388	4,823	5,885,325			5,885,325
T04	Miscellaneous accounts payable		1,685,308	2,978,880		4,664,188			4,664,188
T05	Interest matured unpaid		65,006	75,444		140,450			140,450
T06	Dividends matured unpaid		1,625,158	758,585		2,383,743			2,383,743
T07	Unmatured interest accrued		3,924,697	4,614,702		8,539,399			8,539,399
T08	Unmatured dividends declared		13,426,694	16,897,217	69,531	30,393,442			30,393,442
T09	Accrued accounts payable		4,197,967	10,097,404	62,675	14,358,046			14,358,046
T10	Federal income taxes accrued		9,589,365	10,454,360	163,184	20,207,412			20,207,412
T01	Other taxes accrued		2,122,963	2,240,364	13,553	4,376,881			4,376,881
T12	Other current liabilities							(240,755)	108,921,481
	Total current liabilities		45,897,747	57,662,603	601,886	104,162,236			
	Long-term debt due within 1 year:								
T14	Equipment obligations and other debt		13,706,875	7,661,624		21,368,499			21,368,499
	Held by or for company								
	Actually outstanding		13,706,875	7,661,624		21,368,499			21,368,499
	Long-term debt due after 1 year:								
T16	Funded debt unmatured		270,197,700	178,662,900		448,860,600			448,860,600
	Held by or for company		(74,365,000)			(74,365,000)			(74,365,000)
	Actually outstanding		195,832,700	178,662,900		374,495,600			374,495,600
	Equipment obligations		89,736,250	63,994,000		153,730,250			153,730,250
	Held by or for company								
	Actually outstanding		89,736,250	63,994,000		153,730,250			153,730,250
	Total funded debt and equipment obligations outstanding		285,568,950	242,656,900		528,225,850			528,225,850
T09	Amounts payable to affiliated companies								
	Total long-term debt due after 1 year		285,568,950	242,656,900		528,225,850			528,225,850
	Reserves:								
T71	Pension and welfare reserves		3,814,088	11,300,000		15,114,088			15,114,088
T72	Insurance reserves		651,323	2,060,000		2,911,323			2,911,323
T73	Equalization reserves								
T74	Casualty and other reserves		4,527,877	5,208,559		9,736,436			9,736,436
	Total reserves		9,193,296	18,568,559		27,761,857			27,761,857
	Other liabilities and deferred credits:								
T22	Other liabilities		378,637	3,066,173	31,300	3,676,080			3,676,080
T23	Unamortized premium on long-term debt								
T24	Other deferred credits		1,043,475	644,179	184	1,687,788			1,687,788
T26	Accrued depreciation—leased property		376,251	136,243		512,493			512,493
	Total other liabilities and deferred credits		1,798,163	4,046,593	31,324	5,876,280			5,876,280
	Shareholder's equity								
	Capital stock:								
T91	Capital stock issued								
	Proposed new issue:						D	485,989,126	485,989,126
	Common stock (12,190,456 shares without par value)						D	80,763,260	80,763,260
	Preferred stock (3,076,826 shares—$10 par value)								
	Total							566,752,386	566,752,386

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1955, after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		GNP&B Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	***Shareholders' equity*—Continued**								
	Merging companies:								
	Common stock	$1,000	$30,215,490	$274,028,150	$1,000,000	$305,244,640	----------	$(305,244,640)	----------
	Held by or for company	----------	(26,310)	(2,623,905)	----------	(2,650,115)	----------	2,650,115	----------
	Total	1,000	30,189,180	271,404,245	1,000,000	302,594,525	E	(302,594,525)	----------
	Total capital stock	1,000	30,189,180	271,404,245	1,000,000	302,594,525	----------	226,157,863	$528,752,388
	Capital surplus:								
T84	Premiums and assessments on capital stock	----------	225,159,499	----------	----------	225,159,499	E	(225,159,499)	----------
T85	Paid-in surplus	----------	21,189	1,120,141	----------	1,141,330	----------	----------	1,141,330
T86	Other capital surplus	----------	37,780,687	----------	----------	37,780,687	F	(699,364)	37,081,323
	Total capital surplus	----------	262,981,375	1,120,141	----------	264,081,516	----------	(225,858,863)	38,192,653
	Retained income:								
T87	Retained income—appropriated	----------	----------	1,125,000	----------	1,125,000	----------	----------	1,125,000
T88	Retained income—unappropriated	----------	424,270,219	422,312,540	2,383,683	852,966,443	----------	----------	852,966,443
	Total retained income	----------	424,270,219	423,437,540	2,383,683	853,963,443	----------	----------	853,963,443
	Total shareholders' equity	1,000	717,390,773	705,962,328	3,383,683	1,420,909,484	G	(1,701,300)	1,424,908,184
	Total liabilities and shareholders' equity	1,000	1,073,359,908	1,096,258,307	4,189,383	2,114,304,208	----------	(1,841,735)	2,112,362,451
	Assets								
	Current assets:								
T01	Cash	1,000	5,103,454	4,804,981	258,961	10,324,406	----------	----------	10,324,406
T02	Temporary cash investments	----------	60,763,506	73,679,318	----------	134,447,324	----------	----------	134,447,324
T03	Special deposits	----------	1,857,026	3,276,398	----------	5,133,424	----------	----------	5,133,424
T04	Loans and notes receivable	----------	----------	----------	----------	----------	----------	----------	----------
T05	Traffic and car service balances—debit	----------	1,224,535	2,296,716	----------	3,523,251	A	(240,755)	3,282,496
T06	Net balance receivable from agents and conductors	----------	8,956,217	5,452,182	35,525	15,444,924	----------	----------	15,444,924
T07	Miscellaneous accounts receivable	----------	11,763,225	8,126,350	136,822	19,026,397	----------	----------	19,026,397
T08	Interest and dividends receivable	----------	1,114,384	1,345,903	747	2,460,294	----------	----------	2,460,294
T09	Accrued accounts receivable	----------	14,059,177	5,425,404	34,654	19,519,235	----------	----------	19,519,235
T10	Working fund advances	----------	295,690	227,147	5	522,842	----------	----------	522,842
T11	Prepayments	----------	750	133,228	----------	133,978	----------	----------	133,978
T12	Material and supplies	----------	21,318,948	19,232,316	25,247	40,576,511	----------	----------	40,576,511
T13	Other current assets	----------	325,275	230,530	769	556,574	----------	----------	556,574
	Total current assets	1,000	127,648,947	122,443,441	490,280	250,580,988	----------	(240,755)	250,319,213
	Special funds:								
T15	Sinking funds	----------	----------	----------	----------	----------	----------	----------	----------
T16	Capital and other reserve funds	----------	8,203,732	414,543	----------	8,618,275	----------	----------	8,618,275
T17	Insurance and other funds	----------	975,996	2,219,173	----------	3,195,171	----------	----------	3,195,171
	Total special funds	----------	9,179,728	2,633,716	----------	11,813,446	----------	----------	11,813,446
	Investments:								
T21	Investments in affiliated companies	----------	164,377,345	166,089,475	----------	330,136,820	B	(1,701,300)	328,435,520
T22	Other investments	----------	2,871,644	5,813,982	16,000	8,701,626	----------	----------	8,701,626
T23	Reserve for adjustment of investment and securities—credit	----------	----------	----------	----------	----------	----------	----------	----------
	Total investments	----------	167,249,289	171,903,457	16,000	339,838,446	----------	(1,701,300)	337,137,146
	Properties:								
T31	Road and equipment property	----------	961,117,684	973,690,493	2,709,736	1,937,517,913	----------	----------	1,937,517,913
T32	Improvements on leased property	----------	2,291,213	289,284	----------	2,671,497	----------	----------	2,671,497
	Total transportation property	----------	963,408,897	973,980,783	2,709,736	1,938,189,677	----------	----------	1,938,189,677

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1969, after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		GNP&B Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Assets—Continued								
	Properties—Continued:								
T35	Accrued depreciation—road and equipment	----------	$(188,215,258)	$(209,277,510)	$(287,440)	$(414,780,208)	----------	----------	$(414,780,208)
T36	Amortization of defense projects—road and equipment	----------	(30,255,951)	(39,788,292)	----------	(70,324,243)	----------	----------	(70,324,243)
	Recorded depreciation and amortization	----------	(218,471,208)	(249,065,802)	(287,440)	(484,754,448)	----------	----------	(484,754,448)
	Total transportation property less recorded depreciation and amortization	----------	737,997,884	709,934,880	2,672,388	1,450,605,352	----------	----------	1,450,605,352
T37	Miscellaneous physical property	----------	28,530,140	16,360,908	1,170,890	46,061,933	----------	----------	46,061,933
T38	Accrued depreciation—miscellaneous physical property	----------	(5,056,127)	(1,491,574)	----------	(6,547,701)	----------	----------	(6,547,701)
	Miscellaneous physical property less recorded depreciation	----------	23,474,013	14,869,229	1,170,890	39,513,932	----------	----------	39,513,932
	Total properties less recorded depreciation and amortization	----------	761,471,707	724,804,208	3,843,348	1,489,915,984	----------	----------	1,489,915,984
	Other assets and deferred charges:								
T41	Other assets	----------	1,300,912	949,147	----------	2,149,059	----------	----------	2,149,059
T42	Unamortized discount on long-term debt	----------	1,281,393	2,210,329	----------	3,491,722	----------	----------	3,491,722
T43	Other deferred charges	----------	4,726,130	11,446,306	39,785	16,212,201	----------	----------	16,212,201
	Total other assets and deferred charges	----------	7,308,438	14,304,782	39,785	21,852,982	----------	----------	21,852,982
	Total assets	$1,000	1,073,333,906	1,384,258,207	6,198,383	2,114,304,206	----------	$(1,941,755)	2,112,362,451

( ) Denotes credit.

APPENDIX C

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of December 31, 1966 after giving effect to the Northern Lines merger and the Burlington merger

Note

I. The final combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the amounts shown in pro forma general balance sheet giving effect to the merger of the Northern Pacific, Great Northern and Pacific Coast into New Company, and the Burlington, as of December 31, 1966, adjusted to give effect to the merger as shown by notes below:

A.—(1) To purchase new Burlington first and refunding mortgage series of 2010 4 percent bonds to be pledged under the New Company's consolidated mortgage	$70,000,000
(2) To deposit with Trustee of Northern Pacific refunding and improvement mortgage sufficient funds to redeem at a redemption price of 110 the $17,367,000 par value outstanding refunding and improvement mortgage series "A" 4½ percent	19,103,700
	89,103,700
B.—To reflect investment in $70 million Burlington first and refunding mortgage bonds.	
C.—To reflect reduction in Federal income tax liability applicable to premium paid upon the redemption of Northern Pacific refunding and improvement mortgage series "A" 4½ percent bonds. (See note E)	903,084
D.—To eliminate Northern Pacific refunding and improvement mortgage series "A" bonds called and redeemed	17,367,000

E.—To reflect charge to retained income-unappropriated as a result of net premium costs ($1,736,700 less Federal income tax reduction of approximately $903,084) incurred in redemption of Northern Pacific refunding and improvement mortgage series "A" 4½ percent bonds. (See note C) $833,616

F.—To reflect receipt of cash by Burlington from sale of $70 million Burlington first and refunding mortgage bonds to the New Company.

G.—To reflect issuance by Burlington of $70 million new first and refunding mortgage 4 percent bonds and cancellation of $29,869,000 Burlington first and refunding mortgage bonds ($19,729,000 4 percent series 1998 and $10,140,000 4½ percent series 1970) held in treasury.

H.—To effect new debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Burlington. (See note J) 470,474

I.—To eliminate book investment of New Company, in Burlington as follows:

Common stock	218,491,429
Other secured obligations	
Burlington first and refunding mortgage bonds	70,000,000
	288,491,429

J.—To transfer to current assets credit balance in traffic and car service balances—credit. (See note H) 470,474

K.—To reflect the elimination of the New Company's liability with respect to Burlington first and refunding mortgage bonds upon concurrent pledging of same under the new consolidated mortgage.. 70,000,000

L.—To set up capital stock liability equal to par value of Burlington common stock outstanding in the hands of minority stockholders:

Common stock—without par value	*Shares*	*Amount*
48,033 shares @ 3.25	156.107	$4,803,300

M.—Giving effect to the merger of the respective roads, results in adjustments representing:

(1) Differences between book investment of New Company and par value of Burlington common stock liability (218,491,429 less $166,035,800)	$52,455,629
The $52,455,629 has been debited to other capital surplus, to the extent available	37,051,323
And the balance has been charged to retained income—unappropriated	15,404,306
	52,455,629

N.—The net debit adjustment or reduction in stockholders' equity of $218,491,429 is made up as follows:

(1) Elimination of Burlington common stock held by New Company	166,035,800
(2) Difference between book investment of New Company and par value of Burlington common stock liability	52,455,629
	218,491,429

APPENDIX C

Chicago Northern Pacific / Burlington Lines, Inc. pro forma general balance sheet as of December 31, 1969, after giving effect to merger of Chicago Northern Pacific / Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company

	Assets	Chicago Northern Pacific / Burlington Lines, Inc.			Burlington			Non-conformed	Adjustments and eliminations		After adjustments and eliminations
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations					
			Notes	Amount		Notes	Amount		Notes	Amount	
	Current assets										
701	Cash	$10,013,670	A	$(43,100,700)	$7,768,566	P	$70,000,000	$1,333,036			$(1,333,036)
702	Temporary cash investments	134,447,524			14,779,121			150,170,833			150,170,833
703	Special deposits	5,151,634			1,308,164			6,630,294			6,630,294
704	Loans and notes receivable				2,151			2,151			2,151
705	Traffic and car service balances-debit	3,292,488			0,151			3,292,488	M	$(470,474)	2,812,002
706	Net balance receivable from agents and conductors	13,441,834			7,049,343			22,492,279			22,492,279
707	Miscellaneous accounts receivable	14,029,297			13,340,784			31,527,081			31,527,081
708	Interest and dividends receivable	3,880,251			777,513			3,657,599			3,657,599
709	Accrued accounts receivable	10,349,455			10,842,857			80,192,179			80,192,179
710	Working fund advances	133,570			124,470			466,373			466,373
711	Prepayments	40,279,811			94,303			220,511			220,511
712	Material and supplies	350,371			14,116,111			54,693,082			54,693,082
713	Other current assets				842,743			796,337			796,337
	Total current assets	230,330,013		(43,100,700)	80,671,252		70,000,000	311,710,492		(470,474)	311,239,991
	Special funds										
715	Sinking funds				1,733			1,733			1,733
716	Capital and other reserve funds	3,015,273			8,349,360			14,456,961			14,456,961
717	Insurance and other funds	8,195,171			2,807,950			6,968,133			6,968,133
	Total special funds	11,213,109			6,743,670			30,530,519			30,530,519
	Investments										
721	Investments in affiliated companies	229,455,620	B	70,000,000	82,008,337			430,114,190	1	(260,081,628)	161,032,732
722	Other investments	8,701,396			8,850,965			17,551,991			17,551,991
723	Reserve for adjustment of investment in securities-credit										
	Total investments	328,157,116		70,000,000	60,738,893			447,666,181		(260,081,628)	178,904,713
	Properties										
731	Road and equipment property	1,801,067,860			1,006,000,000			3,026,137,077			3,026,137,078
732	Improvements on leased property	2,871,497			490,578			3,102,373			3,102,378
	Total transportation property	1,803,939,477			1,006,180,968			3,031,310,450			3,031,310,456
735	Accrued depreciation-road and equipment	(414,730,207)			(300,491,630)			(790,022,941)			(790,022,941)
736	Amortization of defense projects-road and equipment	(70,924,233)			(28,963,154)			(98,067,387)			(98,067,387)
	Recorded depreciation and amortization	(485,734,443)			(329,454,784)			(888,090,328)			(888,090,328)
	Total transportation property less recorded depreciation and amortization	1,430,205,032			702,031,179			2,213,009,207			2,213,009,207
737	Miscellaneous physical property	69,091,032			14,567,810			60,938,343			60,938,343
738	Accrued depreciation-miscellaneous physical property	(5,347,701)			(3,729,130)			(10,398,837)			(10,398,837)
	Miscellaneous physical property less recorded depreciation	50,813,972			11,138,674			50,040,078			50,040,078
	Total properties less recorded depreciation and amortization	1,440,019,001			773,730,149			2,263,049,310			2,263,049,310
	Other assets and deferred charges										
741	Other assets	2,149,194			2,331,191			4,380,553			4,380,553
742	Unamortized discount on long-term debt	3,101,725			1,287,592			4,738,574			4,738,574
743	Other deferred charges	10,212,091			5,333,193			19,545,691			19,545,691
	Total other assets and deferred charges	15,463,010			8,951,976			29,664,818			29,664,818
	Total assets	2,111,182,121		(43,100,700)	931,945,333		70,000,000	2,981,920,320		(260,981,822)	2,980,962,343

Great Northern Pacific & Burlington Lines, Inc. pro forma general balance sheet as of December 31, 1970, after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		CNP&B Lines, Inc.			Burlington			Net combined	Adjustments and eliminations		After adjustments and eliminations
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations					
			Notes	Amount		Notes	Amount		Notes	Amount	
	Liabilities and shareholders' equity										
	Current liabilities:										
752	Traffic and car service balances—credit	----------	-------	----------	$470,474	-------	----------	$470,474	J	$(470,474)	----------
753	Audited accounts and wages payable	$12,972,282	-------	----------	10,914,722	-------	----------	23,887,123	-----	----------	$23,887,123
754	Miscellaneous accounts payable	3,585,328	-------	----------	3,130,530	-------	----------	6,715,858	-----	----------	6,715,858
755	Interest matured unpaid	4,664,196	-------	----------	378,871	-------	----------	5,043,069	-----	----------	5,043,069
756	Dividends matured unpaid	140,650	-------	----------	----------	-------	----------	140,650	-----	----------	140,650
757	Unmatured interest accrued	2,262,748	-------	----------	2,709,816	-------	----------	5,083,564	-----	----------	5,083,564
758	Unmatured dividends declared	8,329,299	-------	----------	----------	-------	----------	8,329,299	-----	----------	8,329,299
759	Accrued accounts payable	30,393,142	-------	----------	22,157,253	-------	----------	52,550,795	-----	----------	52,550,795
760	Federal income taxes accrued	14,233,046	C	--- $(903,064)	5,141,718	-------	----------	19,596,677	-----	----------	19,596,677
761	Other taxes accrued	20,207,413	-------	----------	8,454,288	-------	----------	28,661,701	-----	----------	28,661,701
763	Other current liabilities	4,276,535	-------	----------	3,533,781	-------	----------	7,810,266	-----	----------	7,810,266
	Total current liabilities	103,821,651	-------	(903,064)	57,464,064	-------	----------	160,913,663	-----	(470,474)	160,441,849
	Long-term debt due within 1 year:										
764	Equipment obligations and other debt	21,268,498	-------	----------	17,692,316	-------	----------	38,960,815	-----	----------	38,960,815
	Held or by for company	----------	-------	----------	(2,609,115)	-------	----------	(2,609,115)	-----	----------	(2,609,115)
	Actually outstanding	21,268,498	-------	----------	15,087,201	-------	----------	36,458,700	-----	----------	36,458,700
	Long-term debt due after 1 year:										
765	Funded debt unmatured	448,860,690	D	(17,367,000)	143,364,988	C	$40,131,000	614,989,678	-----	----------	614,989,678
	Held by or for company	(74,365,000)	-------	----------	(32,446,988)	-------	29,969,900	(76,942,088)	L	(70,000,000)	(146,942,088)
	Actually outstanding	374,495,690	-------	(17,367,000)	110,918,000	-------	70,000,000	537,946,690	-----	(70,000,000)	467,946,690
766	Equipment obligations	153,730,250	-------	----------	132,013,488	-------	----------	285,743,738	-----	----------	285,743,738
	Held by or for company	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
	Actually outstanding	153,730,250	-------	----------	132,013,488	-------	----------	285,743,738	-----	----------	285,743,738
	Total funded debt and equipment obligations outstanding	528,225,950	-------	(17,367,000)	243,033,488	-------	70,000,000	823,690,306	-----	(70,000,000)	753,690,306
769	Amounts payable to affiliated companies	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
	Total long-term debt due after 1 year	528,225,950	-------	(17,367,000)	243,033,488	-------	70,000,000	823,690,306	-----	(70,000,000)	753,690,306
	Reserves:										
771	Pension and welfare reserves	18,114,096	-------	----------	----------	-------	----------	18,114,096	-----	----------	18,114,096
772	Insurance reserves	2,911,323	-------	----------	4,096,481	-------	----------	6,997,804	-----	----------	6,997,804
773	Equalization reserve	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
774	Casualty and other reserves	6,736,436	-------	----------	1,173,917	-------	----------	10,912,353	-----	----------	10,912,353
	Total reserves	27,761,857	-------	----------	5,242,398	-------	----------	33,024,253	-----	----------	33,024,253
	Other liabilities and deferred credits:										
782	Other liabilities	3,675,960	-------	----------	1,246,965	-------	----------	4,922,947	-----	----------	4,922,947
783	Unamortized premium on long-term debt	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
784	Other deferred credits	1,667,784	-------	----------	626,379	-------	----------	2,294,167	-----	----------	2,294,167
785	Accrued depreciation—leased property	512,493	-------	----------	198,343	-------	----------	710,836	-----	----------	710,836
	Total other liabilities and deferred credits	5,876,240	-------	----------	2,071,730	-------	----------	7,928,010	-----	----------	7,928,010
	Shareholders' equity										
	Capital stock:										
791	Capital stock issued										
	Proposed new issue										
	Common stock (19,240,995 shares—without par value)	496,909,129	-------	----------	----------	-------	----------	496,909,129	L	4,903,320	500,799,429
	Preferred stock (3,076,326 shares—$10 par value)	30,763,260	-------	----------	----------	-------	----------	30,763,260	-----	----------	30,763,260
	Total	526,732,389	-------	----------	----------	-------	----------	526,732,389	-----	4,903,320	531,635,649

Great Northern Pacific & Burlington Lines, Inc. pro forma general balance sheet as of December 31, 1966, after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

	GNP&B Lines, Inc.			Burlington			Net combined	Adjustments and eliminations		After adjustments and eliminations
	General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations					
		Notes	Amount		Notes	Amount		Notes	Amount	
Liabilities and shareholders' equity—Continued										
Shareholders' equity—Continued										
Merging companies:										
Common stock	----------	-------	----------	$170,539,100	-------	----------	$170,539,100	-----	$(170,539,100)	----------
Held by or for company	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
Total	----------	-------	----------	170,539,100	-------	----------	170,539,100	-----	(170,539,100)	----------
Total capital stock	$527,752,388	-------	----------	170,539,100	-------	----------	697,391,488	-----	(166,033,500)	$531,355,988
Capital surplus:	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
T94 Premium and assessments on capital stock	1,141,330	-------	----------	----------	-------	----------	1,141,330	-----	----------	1,141,330
T95 Paid-in surplus	37,051,323	-------	----------	----------	-------	----------	37,051,323	M	(37,051,323)	----------
T96 Other capital surplus	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
Total capital surplus	38,192,653	-------	----------	----------	-------	----------	38,192,653	-----	(37,051,323)	1,141,330
Retained income:	1,128,000	-------	----------	48,025,460	-------	----------	49,150,460	-----	----------	49,150,460
T97 Retained income—appropriated	888,838,443	E	(833,616)	389,052,125	-------	----------	1,247,056,952	M	(15,404,308)	1,231,652,616
T98 Retained income—unappropriated	----------	-------	----------	----------	-------	----------	----------	-----	----------	----------
Total retained income	889,963,443	-------	(833,616)	437,077,585	-------	----------	1,296,207,412	-----	(15,404,308)	1,280,803,104
Total shareholders' equity	1,424,908,484	-------	(833,616)	607,616,685	-------	----------	2,031,891,553	N	(215,491,629)	1,813,500,124
Total liabilities and shareholders' equity	9,112,062,451	-------	(19,103,700)	931,045,535	-------	70,000,000	3,094,004,286	-----	(288,961,908)	2,805,042,383

( ) Denotes contra.

APPENDIX D

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of December 31, 1966 after giving effect to lease of Spokane, Portland and Seattle Railway Company

A.—Transfer debit balance in traffic and car service balances-debit to traffic and car service balances-credit as the net balance becomes a credit after recording SP&S accounts on books of the New Company.

B.—Represents property investment accounts, depreciation reserves, funded dept, equipment obligations and shareholders' equity to remain in the SP&S accounts.

C.—Represents net liability of the New Company to the SP&S for excess of assets over liabilities of the SP&S to be recorded in the accounts to the New Company, as follows:

	Debit	Credit
Current assets	$14,451,838	
Capital and other reserve funds	123,381	
Investments	30,586,096	
Other assets	95,245	
Other deferred charges	265,015	
Current liabilities		$10,633,690
Casualty and other reserves		148,257
Other liabilities		2,694
Other deferred credits		115,341
Net liability of New Company to SP&S (Note D) account 769, amounts payable to affiliated companies		34,621,593
Total	45,521,575	45,521,575

D.—The pro forma balance sheet as of December 31, 1966, after giving effect to the merger of the Great Northern, Northern Pacific, Burlington and Pacific Coast shows total long-term debt of $790,148,005. After giving effect to the lease of the SP&S the new figure is $824,769,598. The difference of $34,621,593 represents an intercompany indebtedness of the New Company to the SP&S as indicated under note C above.

APPENDIX D

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1966 giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.

	GNP&B Lines, Inc.	SP&S	Combined	Adjustments and eliminations		After adjustments and eliminations
				Notes	Amount	
Assets						
Current assets:						
701 Cash	$(1,335,408)	$3,117,639	$1,782,231	----	----------	$1,782,231
702 Temporary cash investments	159,172,655	2,096,131	161,268,786	----	----------	161,268,786
703 Special deposits	6,639,298	37	6,639,335	----	----------	6,639,335
704 Loans and notes receivable	2,151	----------	2,151	----	----------	2,151
705 Traffic and car service balances--debit	2,812,022	----------	2,812,022	A	$(2,812,022)	----------
706 Net balance receivable from agents and conductors	22,493,279	1,020,995	23,514,274	----	----------	23,514,274
707 Miscellaneous accounts receivable	31,527,061	1,710,796	33,237,857	----	----------	33,237,857
708 Interest and dividends receivable	3,437,599	2,569	3,440,168	----	----------	3,440,168
709 Accrued accounts receivable	30,102,172	3,630,194	33,732,366	----	----------	33,732,366
710 Working fund advances	668,272	1,153	669,425	----	----------	669,425
711 Prepayments	228,511	8,662	237,173	----	----------	237,173
712 Material and supplies	54,693,022	2,747,799	57,440,821	----	----------	57,440,821
713 Other current assets	799,357	115,863	915,220	----	----------	915,220
Total current assets	311,239,991	14,451,838	325,691,829	----	(2,812,022)	322,879,807
Special funds:						
715 Sinking funds	1,732	----------	1,732	----	----------	1,732
716 Capital and other reserve funds	14,456,661	104,029	14,560,690	----	----------	14,560,690
717 Insurance and other funds	6,098,123	19,352	6,117,475	----	----------	6,117,475
Total special funds	20,556,516	123,381	20,679,897	----	----------	20,679,897
Investments:						
721 Investments in affiliated companies	161,952,721	38,979,469	200,932,190	-----	----------	200,932,190
722 Other investments	17,951,991	540,917	18,492,908	----	----------	18,492,908
723 Reserve for adjustment of investment in securities--credit	----------	(8,934,290)	(8,934,290)	----	----------	(8,934,290)
Total investments	179,904,712	30,586,096	210,490,808	----	----------	210,490,808

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1966 giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		GNP&B Lines, Inc.	SP&S	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Assets—Continued						
	Properties:						
731	Road and equipment property	$3,028,157,072	$122,782,005	$3,150,939,077	B	$(122,782,055)	$3,028,157,072
732	Improvements on leased property	3,162,373	507,518	3,669,891	B	(507,518)	3,162,373
	Total transportation property	3,031,319,445	123,289,523	3,154,608,968	----	(123,289,523)	3,031,319,445
735	Accrued depreciation—road and equipment	(720,222,841)	(30,397,649)	(750,620,490)	B	30,397,649	(720,222,841)
736	Amortization of defense projects—road and equipment	(98,087,397)	(1,945,981)	(100,033,378)	B	1,945,981	(98,087,397)
	Recorded depreciation and amortization	(818,310,238)	(32,343,630)	(850,653,868)	----	32,343,630	(818,310,238)
	Total transportation property less recorded depreciation and amortization	2,213,009,207	90,945,893	2,303,955,100	----	(90,954,893)	2,213,009,207
737	Miscellaneous physical property	60,939,543	6,391,495	67,331,038	B	(6,391,495)	60,939,543
738	Accrued depreciation—miscellaneous physical property	(10,292,937)	(1,270,277)	(11,563,214)	B	1,270,277	(10,292,937)
	Miscellaneous physical property less recorded depreciation	50,646,606	5,121,218	55,767,824	----	(5,121,218)	50,646,606
	Total properties less recorded depreciation and amortization	2,263,655,813	96,067,111	2,359,722,924	----	(96,067,111)	2,263,655,813
	Other assets and deferred charges:						
741	Other assets	5,380,553	95,245	5,475,798	----	----------	5,475,798
742	Unamortized discount on long-term debt	4,759,304	----------	4,759,304	----	----------	4,759,304
743	Other deferred charges	19,545,494	265,015	19,810,509	----	----------	19,810,509
	Total other assets and deferred charges	29,685,351	360,260	30,045,611	----	----------	30,045,611
	Total assets	2,805,042,383	101,588,686	2,906,631,069	----	(98,879,133)	2,847,751,936

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1966 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the Lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		GNPBL Lines, Inc.	SPSL	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Liabilities and shareholders' equity						
	Current liabilities:						
752	Traffic and car service balances—credit	----------	$3,186,504	$3,186,504	A	$(2,812,022)	$374,482
753	Audited accounts and wages payable	$23,887,123	1,445,151	25,332,274	----	----------	25,332,274
754	Miscellaneous accounts payable	9,018,955	431,408	9,450,363	----	----------	9,450,363
755	Interest matured unpaid	5,043,059	539	5,043,598	----	----------	5,043,598
756	Dividends matured unpaid	140,650	----------	140,650	----	----------	140,650
757	Unmatured interest accrued	5,083,559	582,151	5,675,710	----	----------	5,675,710
758	Unmatured dividends declared	8,539,399	----------	8,539,399	----	----------	8,539,399
759	Accrued accounts payable	52,550,700	2,709,760	55,260,460	----	----------	55,260,460
760	Federal income taxes accrued	18,598,677	(335,000)	18,263,677	----	----------	18,263,677
761	Other taxes accrued	29,661,701	1,755,619	31,417,320	----	----------	31,417,320
763	Other current liabilities	7,910,266	857,557	8,767,823	----	----------	8,767,823
	Total current liabilities	160,441,989	10,633,890	171,075,879	----	(2,812,022)	168,263,857
	Long-term debt due within 1 year:						
764	Equipment obligations and other debt	39,060,815	793,842	39,854,657	B	(793,842)	39,060,815
	Held by or for company	(2,605,115)	----------	(2,605,115)	----	----------	(2,605,115)
	Actually outstanding	36,455,700	793,842	37,249,542	----	(793,842)	36,455,700
	Long-term debt due after 1 year:						
765	Funded debt unmatured	614,889,485	42,710,000	657,599,485	B	(42,710,000)	614,889,485
	Held by or for company	(146,942,885)	----------	(146,942,885)	----	----------	(146,942,885)
	Actually outstanding	467,946,600	42,710,000	510,656,600	----	(42,710,000)	467,946,600
766	Equipment obligations	285,745,705	3,037,658	288,783,363	B	(3,037,658)	285,745,705
	Held by or for company	----------	----------	----------	----	----------	----------
	Actually outstanding	285,745,705	3,037,658	288,783,363	----	(3,037,658)	285,745,705
	Total funded debt and equipment obligations outstanding	753,692,305	45,747,658	799,439,963	----	(45,747,658)	753,692,305
769	Amounts payable to affiliated companies	----------	----------	----------	C	34,621,593	34,621,593
	Total long-term debt due after 1 year	753,692,305	45,747,658	799,439,963	----	(11,126,065)	788,313,898

Great Northern Pacific & Burlington Lines, Inc., pro forma general balance sheet as of December 31, 1966 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		GNP&B Lines, Inc.	SP&S	Combined	Adjustments and eliminations Notes	Adjustments and eliminations Amount	After adjustments and eliminations
	Liabilities and shareholders' equity—Continued						
	Reserves:						
771	Pension and welfare reserves	$15,114,098	----------	$15,114,098	----	----------	$15,114,098
772	Insurance reserves	6,997,804	----------	6,997,804	----	----------	6,997,804
773	Equalization reserves	----------	----------	----------	----	----------	----------
774	Casualty and other reserves	10,912,353	$148,257	11,060,610	----	----------	11,060,610
	Total reserves	33,024,255	148,257	33,172,512	----	----------	33,172,512
	Other liabilities and deferred credits:						
782	Other liabilities	4,922,987	2,694	4,925,681	----	----------	4,925,681
783	Unamortized premium on long-term debt	----------	----------	----------	----	----------	----------
784	Other deferred credits	2,294,167	115,341	2,409,508	----	----------	2,409,508
785	Accrued depreciation—leased property	710,856	43,103	753,959	B	$ (43,103)	710,856
	Total other liabilities and deferred credits	7,928,010	161,138	8,089,148	----	(43,103)	8,046,045
	Shareholders' equity:						
	Capital stock:						
791	Capital stock issued						
	Proposed new issue						
	Common stock (12,346,595 shares-without par value)	500,792,428	----------	500,792,428	----	----------	500,792,428
	Preferred stock (3,076,326 shares-$10 par value)	30,763,260	----------	30,763,260	----	----------	30,763,260
	Total	531,555,688	----------	531,555,688	----	----------	531,555,688
	Merging companies:						
	Common stock	----------	40,000,000	40,000,000	B	(40,000,000)	----------
	Held by or for company	----------	----------	----------	----	----------	----------
	Total	----------	40,000,000	40,000,000	----	(40,000,000)	----------
	Total capital stock	531,555,688	40,000,000	571,555,688	----	(40,000,000)	531,555,688
	Capital surplus:						
794	Premiums and assessments on capital stock	----------	----------	----------	----	----------	----------
795	Paid-in surplus	1,141,330	9,300,000	10,441,330	B	(9,300,000)	1,141,330
796	Other capital surplus	----------	----------	----------	----	----------	----------
	Total capital surplus	1,141,330	9,300,000	10,441,330	----	(9,300,000)	1,141,330
	Retained income:						
797	Retained income-appropriated	49,150,460	----------	49,150,460	----	----------	49,150,460
798	Retained income-unappropriated	1,231,652,646	34,804,101	1,266,456,747	B	(34,804,101)	1,231,652,646
	Total retained income	1,280,803,106	34,804,101	1,315,607,207	----	(34,804,101)	1,280,803,106
	Total shareholders' equity	1,813,500,124	84,104,101	1,897,604,225	----	(84,104,101)	1,813,500,124
	Total liabilities and shareholders' equity	2,805,042,383	141,580,686	2,946,631,069	----	(98,879,133)	2,847,751,936

() Denotes contra

APPENDIX E

Great Northern Pacific & Burlington Lines, Inc. pro forma retained income--unappropriated as of December 31, 1966 after giving effect to merger

	NP Ry. Co.	GN Ry. Co.	CB&Q R.R. Co.	SP&S Ry. Co.	Pacific Coast R.R. Co.	Combined	Adjustments and eliminations	After adjustments and eliminations
Credit balance at beginning of year	$409,295,177	$412,979,682	$371,084,412	$32,131,784	$2,904,246	$1,228,395,301	----------	$1,228,395,301
Credits (current year)								
Credit balance carried from income	30,673,591	36,547,109	23,810,592	3,297,580	206,380	94,535,252	----------	94,535,252
Other credits to retained income	----------	1,737,309	9,355,885	----------	----------	11,093,194	----------	11,093,194
Federal income taxes assigned to retained income (net)	----------	----------	1,258,679	577,000	----------	1,835,679	----------	1,835,679
Total credits	439,968,768	451,264,100	405,509,568	36,006,364	3,110,626	1,335,859,426	----------	1,335,859,426
Debits (current year)								
Loss on sale or retirement of property	----------	----------	----------	----------	----------	1,125,000	----------	1,125,000
Appropriations for sinking and other reserve funds	----------	1,125,000	3,644,541	1,202,263	105,668	4,952,472	$51,042,023 (a)	55,994,495
Other debits to retained income	----------	----------	----------	----------	(50,725)	744,275	----------	744,275
Federal income taxes assigned to retained income (net)	----------	795,000	----------	----------	----------	(1,125,000)	----------	(1,125,000)
Appropriations released	----------	(1,125,000)	----------	----------	500,000	47,468,010	----------	47,468,010
Dividends	15,698,550	18,456,558	12,812,902	----------	----------	53,164,757	51,042,023	104,206,780
Total debits	15,698,550	19,251,558	16,457,443	1,202,263	554,943	1,282,694,669	(51,042,023)	1,231,652,646
Credit balance as of December 31,1966	424,270,218	432,012,542	389,052,125	34,804,101	2,555,683			

(a) Net premium on redemption of Northern Pacific Refunding and Improvement Mortgage Series "A" 4 1/2-percent Bonds---------- $833,616
Cost of Burlington common stock in excess of its par value after application of other capital surplus to the extent available---------- 15,404,306
Elimination of credit balance of retained income-unappropriated of the SP&S Ry. Co. as of August 31, 1961 not recorded by the GNP&B Lines, Inc. under terms of lease of the SP&S Ry. Co.---------- 34,804,101
51,042,023

APPENDIX F

Great Northern Railway Company, long-term debt

Description	Nominal date of issue	Date of maturity	Interest rate	Amount outstanding at December 31, 1966
			(Percent)	
Amount due after 1 year:				
Mortgage bonds[a]				
General Mortgage Gold Bonds, Series C	January 1, 1923	January 1, 1973	5	$14,154,900
General Mortgage Gold Bonds, Series D	July 1, 1926	July 1, 1976	4 1/2	14,508,000
General Mortgage Gold Bonds, Series N	July 1, 1945	January 1, 1990	3 1/8	37,500,000
General Mortgage Gold Bonds, Series O	------ do	January 1, 2000	3 1/8	37,500,000
General Mortgage Gold Bonds, Series P	January 1, 1946	January 1, 1982	2 3/4	40,000,000
General Mortgage Gold Bonds, Series Q	------ do	January 1, 2010	2 5/8	35,000,000
Equipment obligations	Various	Various	2-5 1/4	63,994,000
Total amount due after 1 year				242,656,900
Amount due within 1 year:				
Equipment obligations				7,633,000
Miscellaneous obligations				28,624
Total amount due within 1 year				7,661,624
Total long-term debt				[b]242,656,900

[a]Issued under Great Northern Gold Bond Mortgage, dated January 1, 1921.

[b]Does not include or reflect liability of Great Northern as guarantor of certain obligations of affiliated companies of approximately $10 million. Also Great Northern is contingently liable as guarantor along with other railroads for its proportionate share of any contingent obligations not met by other railroad participants of obligations of Trailer Train Company aggregating $81,392,855.

APPENDIX F—Continued

Northern Pacific Railway Company long-term debt

Description	Nominal date of issue	Date of maturity	Interest rate	Amount outstanding at December 31, 1966
			(Percent)	
Amount due after 1 year:				
Mortgage bonds				
Prior lien mortgage	January 1897	January 1997	4	[c]$93,365,800
General lien mortgage	January 1897	January 2047	3	[d]53,585,900
St. Paul-Duluth Division Mortgage	June 1900	December 1996	4	[e]252,000
Refunding and Improvement Mortgage, Series A	July 1914	July 2047	4½	[f-g]17,367,000
Refunding and Improvement Mortgage, Series E	July 1945	July 2047	4	
St. Paul and Duluth RR First Consolidated Mortgage	June 1898	June 1968	4	[h]1,000,000
Collateral Trust Bonds	October 1954	October 1984	4	[i]30,262,000
Equipment obligations	Various	Various	2 3/8-4 7/8	89,736,250
Total amount due after 1 year				285,568,950
Amount due within 1 year:				
Collateral Trust Bonds				1,560,000
Equipment obligations				10,677,000
Miscellaneous obligations				1,469,875
Total amount due within 1 year				13,706,875
Total long-term debt				299,275,825

[c]Issued under Northern Pacific Prior Lien Mortgage, dated November 10, 1896.

[d]Issued under Northern Pacific General Lien Mortgage, also dated November 10, 1896. Figure shown does not include $5,555,000 held in treasury or pledged.

[e]Issued under Northern Pacific St. Paul-Duluth Division Mortgage, dated June 15, 1900.

[f]Issued under Northern Pacific Refunding and Improvement Mortgage, dated July 1, 1914. These bonds would be redeemed and canceled as part of the proposed unfication program.

[g]Issued under same vehicle described in (f) above. In addition to those publicly held $63,250,000 principal amount of Northern Pacific Refunding and Improvement bonds, Series E, issued under same mortgage are pledged under Northern Pacific Collateral Trust Indenture dated October 1, 1954. After merger of Northern Lines those bonds would be released from pledge and like amount of New Company's new consolidated mortgage bonds would be deposited and pledged in substitution therefor.

[h]Issued under the St. Paul and Duluth First Consolidated Mortgage, dated June 1, 1898.

[i]Issued under Northern Pacific Collateral Trust Indenture, dated October 1, 1954. Figure shown does not include $5,358,000 held in treasury or pledged.

APPENDIX F—Continued

Chicago, Burlington & Quincy Railroad Company long-term debt

Description	Nominal date of issue	Date of maturity	Interest rate	Amount outstanding at December 31, 1966
			(Percent)	
Amount due after 1 year:				
Mortgage bonds[j]				
First and Refunding Mortgage, Series 1970	August 1, 1944	August 1, 1970	4 1/2	[k]$
First and Refunding Mortgage, Series 1970	August 1, 1945	August 1, 1970	2 7/8	[l]43,333,000
First and Refunding Mortgage, Series 1978	February 1, 1958	February 1, 1978	4 3/8	[m]18,677,000
First and Refunding Mortgage, Series 1985	August 1, 1945	August 1, 1985	3 1/8	[n]29,251,000
First and Refunding Mortgage, Series 1990	February 1, 1950	February 1, 1990	3	[o]19,557,000
First and Refunding Mortgage, Series 1998	February 1, 1958	February 1, 1998	4	[p]
Equipment obligations	Various	Various	2 5/8 -5 3/4	132,015,455
Total amount due after 1 year				242,833,455
Amount due within 1 year:				
Equipment obligations			2 5/8 -5 3/4	15,087,201
Total amount due within 1 year				15,087,201
Total long-term debt				257,920,656

[j]Issued under Burlington First and Refunding Mortgage, dated February 1, 1921, under which First National City Bank is successor trustee, and secured by a first lien on 7,854.03 miles of railroad owned by Burlington and on all (358,563) shares of capital stock owned by Burlington in C&S and various terminal companies.

[k]$10,140,000 principal amount excluded-heretofore reacquired and held in treasury.

[l]$796,000 principal amount excluded-heretofore reacquired and held in treasury.

[m]$1,260,000 principal amount excluded-heretofore reacquired and held in treasury.

[n]$2,205,000 principal amount excluded-heretofore reacquired and held in treasury.

[o]$922,000 principal amount excluded-heretofore reacquired and held in treasury.

[p]$19,729,000 principal amount excluded-heretofore reacquired and held in treasury.

APPENDIX F—Continued

Spokane, Portland and Seattle Railway Co. long-term debt

Description	Nominal date of issue	Date of maturity	Interest rate	Amount outstanding at December 31, 1966
			(Percent)	
Amount due after 1 year:				
First Mortgage Bonds	March 1, 1971	March 1, 1911	4	[q]$42,710,000
Equipment obligations	Various	Various	3 3/4 - 4 5/8	3,037,658
Total amount due after 1 year				45,747,658
Amount due within 1 year:				
Equipment obligations			4 - 4 5/8	793,842
Total amount due within 1 year				793,842
Total long-term debt				46,541,500

[q]Owned one-half each by Northern Pacific and Great Northern. These bonds were originally due March 1, 1961, extended to March 1, 1971, under Finance Docket No. 21468, dated February 24, 1961.

Because the proposal involving SP&S contemplates lease only these bonds held in equal proportions by Great Northern and Northern Pacific would not be extinquished.

APPENDIX G

Great Northern Railway Company Comparative Income Statements

	1958	1959	1960	1968
Railway operating income				
Railway operating revenues	$251,671,504	$254,559,530	$246,024,650	$281,777,075
Railway operating expenses	190,854,844	197,108,501	194,051,856	207,856,575
Net revenue from railway operations	60,816,660	57,451,029	51,972,794	73,920,500
Railway tax accruals	32,386,938	29,861,886	28,701,516	37,351,961
Railway operating income	28,429,722	27,589,143	23,271,278	36,568,539
Rent income				
Rent from locomotives	276,997	223,276	191,135	48,141
Rent from passenger-train cars	1,151,525	1,155,677	1,073,814	919,116
Rent from work equipment	14,922	33,275	24,044	42,508
Joint facility rent income	1,694,034	1,579,726	1,612,979	1,600,210
Total rent income	3,137,478	2,991,954	2,901,972	2,609,975
Rents payable				
Hire of freight cars-debit balance	2,249,511	3,111,672	4,473,541	3,716,153
Rent for locomotives	150,698	91,520	89,012	48,974
Rent for passenger-train cars	1,008,478	959,966	920,445	746,337
Rent for work equipment	25,381	3,318	1,513	6,376
Joint facility rents	2,309,822	2,204,193	2,253,291	2,372,775
Total rents payable	5,743,890	6,370,669	7,737,802	6,890,615
Net rents	(2,606,412)	(3,378,715)	(4,835,830)	(4,280,640)
Net railway operating income	25,823,310	24,210,428	18,435,448	32,287,899
Other income				
Income from lease of road and equipment	5,588	6,390	4,674	4,175
Miscellaneous rent income	631,581	679,734	705,401	873,875
Income from nonoperating property	680,997	641,101	545,553	693,943
Separately operated properties-profit			56,447	
Dividend income	6,405,709	6,338,014	6,313,714	7,391,247
Interest income	2,183,588	2,633,966	2,915,729	4,928,363
Income from sinking and other reserve funds	188,062	312,548	262,081	86,671
Miscellaneous income	925,543	721,208	645,151	380,639
Total other income	11,021,148	11,332,961	11,448,750	14,358,913
Total income	36,844,458	35,543,389	29,884,198	46,646,812

Great Northern Railway Company Comparative Income Statements—Continued

	1954	1955	1960	1965
Miscellaneous deduction from income				
Miscellaneous rents	$51,479	$58,837	$59,592	$71,111
Miscellaneous tax accruals	201,930	209,375	230,670	276,279
Separately operated properties-loss	37,829	161,218		8,143
Miscellaneous income charges	634,399	139,547	383,815	863,661
Total miscellaneous deduction	$25,637	568,977	674,077	1,219,194
Income available for fixed charges	35,918,821	34,974,412	29,710,121	45,427,618
Fixed charges				
Rent for leased road and equipment	1,895	2,071	3,954	1,618
Interest on funded debt	8,195,887	8,261,042	8,337,072	8,705,453
Interest on unfunded debt	3,576		472	124
Amortization of discount on funded debt	139,865	153,026	145,509	173,314
Total fixed charges	8,341,023	8,416,139	8,486,907	8,880,509
Income after fixed charges	$27,577,798	$26,558,273	$20,723,214	$36,547,109
Operating ratio: (percent)	76.04	77.45	78.87	72.77

( ) Denotes contra

Northern Pacific Railway Company Comparative Income Statements

Railway operating income				
Railway operating revenue	$179,107,731	$183,609,782	$174,915,492	$210,189,700
Railway operating expenses	143,066,032	146,426,171	147,871,058	168,697,965
Net revenue from railway operations	36,041,699	37,182,611	27,044,434	41,491,735
Railway tax accruals	21,139,202	25,492,066	20,212,004	24,255,061
Railway operating income	14,902,497	11,690,545	6,832,430	17,236,674
Rent income				
Rent from locomotives	253,114	254,430	227,471	122,385
Rent from passenger-train cars	957,507	913,552	1,084,861	867,334
Rent from work equipment	74,700	102,313	183,797	33,676
Joint facility rent income	4,365,869	4,546,122	4,645,780	4,826,387
Total rent income	5,651,190	5,816,417	6,181,909	5,849,782
Rents payable				
Hire of freight cars-debit balance	581,654	1,186,321	855,438	194,935
Rent for locomotives	53,548	62,514	66,759	17,359
Rent for passenger-train cars	585,449	508,878	847,751	406,408
Rent for work equipment	1,432	3,015	5,718	7,553
Joint facility rents	1,096,285	1,177,716	1,283,133	1,219,432
Total rents payable	2,328,368	2,938,444	2,858,799	1,845,687
New rents	3,322,822	2,877,973	3,783,110	3,804,275
Net railway operating income	18,225,319	14,568,518	10,115,540	21,040,919

Northern Pacific Railway Company Comparative Income Statements--Continued

	1958	1959	1960	1961
Other income				
Income from lease of road and equipment	$45,964	$47,081	$48,693	$44,720
Miscellaneous rent income	1,371,432	1,489,083	1,386,611	1,824,106
Income from nonoperating property	5,722,257	9,115,847	8,404,803	8,856,254
Dividend income	6,603,231	6,356,530	8,986,559	6,620,487
Interest income	2,667,261	3,211,459	3,547,428	3,919,421
Income from sinking and other reserve funds	69,917	113,156	208,428	341,723
Miscellaneous income	1,192,201	1,380,301	932,096	1,801,910
Total other income	17,672,263	21,713,457	21,512,618	23,408,621
Total income	35,897,582	36,281,975	31,826,158	44,449,540
Miscellaneous deductions from income				
Miscellaneous rents	90,391	29,579	30,627	29,761
Miscellaneous tax accruals	661,702	711,481	683,912	1,040,445
Miscellaneous income charges	2,085,874	593,609	932,674	1,016,620
Total miscellaneous deductions	2,777,967	1,334,669	1,647,213	2,086,826
Income available for fixed charges	33,119,615	34,947,306	29,980,945	42,362,714
Fixed charges				
Rent for leased road and equipment	49,618	49,768	49,618	49,618
Interest on funded debt	10,924,586	11,009,193	11,256,439	11,474,521
Interest on unfunded debt	1,966	1,878	10,927	3,064
Amortization of discount on funded debt	131,469	105,302	116,767	161,920
Total fixed charges	11,107,639	11,166,141	11,433,751	11,689,123
Income after fixed charges	$22,011,976	$23,781,165	$18,547,194	$30,673,591
Operating ratio: (percent)	79.87	79.74	84.54	80.26

Chicago, Burlington & Quincy Railroad Company Comparative Income Statements

Railway operating income				
Railway operating revenues	$258,027,700	$263,072,883	$251,135,890	$289,622,347
Railway operating expenses	200,263,598	209,875,069	203,851,532	227,622,927
Net revenue from railway operations	57,764,102	53,197,812	47,284,358	61,999,420
Railway tax accruals	27,403,280	27,338,438	25,178,072	25,738,844
Railway operating income	30,360,822	25,858,376	22,006,286	36,260,576
Rent income				
Rent from locomotives	177,610	139,111	93,316	35,100
Rent from passenger-train cars	1,451,453	1,368,610	1,423,519	1,397,428
Rent from work equipment	41,104	145,917	59,240	56,274
Joint facility rent income	779,639	828,502	867,468	835,900
Total rent income	2,450,026	2,482,140	2,443,543	2,324,702

Chicago, Burlington & Quincy Railroad Company Comparative Statement—Continued

	1958	1959	1960	1961
Rents payable				
Hire of freight cars debit balance	$4,817,495	$4,654,351	$3,252,317	$6,259,999
Rent of locomotives	84,980	(817)	4,640	247,239
Rent for passenger-train cars	1,039,396	1,061,073	1,118,395	1,085,029
Rent for work equipment	272	48	57	2
Joint facility rents	3,195,902	3,183,635	3,441,922	2,286,644
Total rents payable	9,138,045	8,898,490	7,817,331	9,878,913
Net rents	(6,688,019)	(5,416,350)	(5,373,788)	(7,554,211)
Net railway operating income	23,672,803	19,442,026	18,632,498	26,706,365
Other income				
Income from lease of road and equipment	7,724	6,787	6,910	6,835
Miscellaneous rent income	732,649	783,071	875,862	1,268,996
Income from nonoperating property	364,467	409,087	334,672	424,564
Separately operated properties	12,073	12,205	13,545	
Dividend income	992,127	723,198	753,370	572,401
Interest income	793,078	1,290,237	1,238,197	1,586,588
Release of premiums on funded debt	21	21	20	
Miscellaneous income	634,363	2,764,870	573,244	1,478,366
Total other income	3,536,502	5,989,476	3,795,820	5,337,750
Total income	27,209,305	25,431,502	20,428,318	34,040,115
Miscellaneous deductions from income				
Miscellaneous rents	31,072	29,446	33,210	40,861
Miscellaneous tax accruals	137,226	153,492	181,523	213,414
Separately operated properties-loss				4,653
Miscellaneous income charges	180,049	203,564	108,072	418,313
Total miscellaneous deductions	348,347	386,502	322,805	677,241
Income available for fixed charges	26,860,958	25,045,000	20,105,513	33,368,874
Fixed charges				
Rent for leased road and equipment	57,632	56,623	57,293	53,383
Interest on funded debt	7,247,259	7,228,783	7,484,585	9,297,477
Interest on unfunded debt	1,704	1,441	1,245	18,629
Amortization of discount on funded debt	62,631	62,010	69,252	186,793
Total fixed charges	7,369,226	7,348,857	7,612,375	9,556,282
Net income after fixed charges	$19,491,732	$17,696,143	$12,493,138	$23,813,592
Operating ratio: (percent)	77.61	78.99	81.21	78.59

Spokane, Portland and Seattle Railway Company, Comparative Income Statements

	1958	1959	1960	1966
Railway operating income				
Railway operating revenues	$24,040,519	$26,824,376	$25,048,090	$40,491,537
Railway operating expenses	19,699,569	20,403,517	20,030,653	29,078,396
Net revenue from railway operations	4,340,950	6,421,059	5,018,237	11,413,141
Railway tax accruals	2,237,201	2,217,938	2,491,501	4,409,640
Railway operating income	2,103,749	4,203,121	2,526,736	7,003,481
Rent income				
Hire of freight cars-credit balance	65,451			
Rent from locomotives	455,904	465,889	471,569	880,536
Rent from passenger-train cars	188,075	207,923	177,759	157,276
Rent from work equipment	98,423	127,871	108,317	166,131
Joint facility rent income	367,407	383,602	416,916	682,406
Total rent income	1,175,260	1,185,285	1,174,561	1,846,349
Rents payable				
Hire of freight cars -debit balance		26,032	77,358	2,299,866
Rent for locomotives	1,582	25,819	18,697	859,718
Rent for passenger-train cars	142,789	150,445	146,514	136,966
Rent for work equipment	292	13	(7,602)	104,943
Joint facility rents	394,566	530,689	488,317	709,074
Total rents payable	539,229	732,998	724,282	4,112,567
Net rents	636,031	452,287	450,279	(2,265,218)
Net railway operating income	2,739,780	4,655,408	2,977,015	4,738,263
Other income				
Miscellaneous rent income	106,264	118,114	147,767	327,272
Income from nonoperating property	427,657	393,332	468,024	328,879
Interest income	27,000	45,237	30,855	358,313
Income from sinking and other reserve funds	644	1,217	2,555	3,807
Miscellaneous income	10,658	126,875	(5,371)	34,730
Total other income	572,223	684,575	643,770	1,053,801
Total income	4,312,003	5,339,983	3,621,785	5,778,064
Miscellaneous deductions from income				
Miscellaneous rents	1,328	1,335	1,139	1,661
Miscellaneous tax accruals	48,765	42,349	36,042	49,211
Miscellaneous income charges	61,544	33,012	24,722	32,854
Total miscellaneous deductions	109,637	76,696	61,903	83,726
Income available for fixed charges	4,202,366	5,263,287	3,559,882	5,700,338

Spokane, Portland and Seattle Railway Company Comparative Income Statements--Continued

	1958	1957	1956	1955
Fixed charges				
Rent for leased roads and equipment	$36,871	$37,805	37,803	$35,902
Interest on funded debt	2,714,198	2,545,478	2,416,022	1,992,717
Amortization of discount on funded debt	265,618	247,618	239,619	
Total fixed charges	3,016,687	2,830,901	2,693,444	2,028,619
Income after fixed charges	1,040,995	1,217,583	776,788	1,837,439
Operating ratio: (percent)	78.87	76.06	78.36	71.91
Pacific Coast Railroad Company Comparative Income Statements				
Railway operating revenues	$799,686	$818,895	$818,911	$698,992
Railway operating expenses	701,909	779,194	763,192	593,547
Net revenue from railway operations	97,977	37,701	55,719	105,445
Railway tax accruals	44,995	44,448	103,803	178,397
Railway operating income	53,0740	57,2539	47,9330	277,5058
Rent income				
Rent from locomotives	91	91	90	90
Joint facility rent income	77,500	79,749	109,987	81,502
Total rent income	77,591	79,865	110,077	81,592
Rents payable				
Hire of freight cars-debit balance	88,585	85,817	94,994	109,594
Rent for locomotives	6,955	6,998	7,376	15,314
Rent for passenger train cars	91			
Rent for work equipment	817	994	4,927	1,021
Joint facility rents	2,517	2,953	2,976	2,959
Total rents payable	89,786	88,160	94,842	127,332
Net rents	5,901	8,650	41,715	(18,153)
Net railway operating income	65,7718	69,3539	69,7720	128,255
Other income				
Income from lease of road and equipment	9,499	9,999	9,999	3,782
Miscellaneous rent income	11,389	10,089	11,498	12,599
Income from nonoperating property	8,945	11,750	13,900	15,290
Interest income			965	747
Miscellaneous income	1,008		914	96,225
Total other income	31,851	31,837	37,876	128,643
Total income	2,938	6,873	40,539	263,878
Miscellaneous deductions from income				
Miscellaneous rents	9	9	9	881
Miscellaneous tax accruals	2,992	6,187	13,146	16,967
Miscellaneous income charges	1,845	18	21	22,516
Total miscellaneous deductions	4,359	6,703	13,180	39,364
Income available for fixed charges	79	2238	27,3421	224,5142
Fixed charges				
Interest on funded debt				
Total fixed charges	178	1,2420	527,161	1/6,187
Net income after fixed charges	95,67	88,17	97,58	97,14
Operating ratio: (percent)				

Great Northern Pacific & Burlington Lines, Inc., combined income statement as of December 31, 1960

	Northern Pacific	Great Northern	Burlington	Pacific Coast	SP&S	Combined
Railway operating income						
Railway operating revenues	$210,108,700	$261,777,075	$298,622,247	$686,372	$40,481,537	$823,777,031
Railway operating expenses	168,867,965	207,836,575	257,632,927	283,347	29,078,396	633,349,410
Net revenue from railway operations	41,241,735	53,940,500	41,989,320	402,825	11,413,141	190,427,621
Railway tax accruals	26,255,291	37,313,947	15,730,805	175,717	4,409,860	83,885,772
Railway operating income	14,986,444	16,626,553	26,258,515	227,108	7,003,281	97,795,849
Rent income						
Rent from locomotives	172,945	48,141	35,180	(2)	860,530	1,088,138
Rent from passenger-train cars	867,336	939,116	1,387,420	----------	157,270	3,341,154
Rent from work equipment	33,876	42,508	16,374	----------	186,131	298,799
Joint facility rent income	4,420,147	2,600,210	835,900	41,042	662,406	7,803,945
Total rent income	5,494,304	3,630,975	2,274,874	41,042	1,866,349	12,512,044
Rents payable						
Hire of freight cars-debit balance	284,835	2,716,153	6,259,990	188,986	2,295,864	12,043,549
Rent for locomotives	17,259	48,574	247,239	15,324	879,710	1,198,606
Rent for passenger-train cars	406,408	746,337	1,040,029	----------	138,966	2,329,740
Rent for work equipment	7,553	6,376	2	2,021	104,943	119,895
Joint facility rents	2,210,432	2,377,775	2,288,644	2,458	704,074	6,583,384
Total rents payable	2,926,487	5,895,215	9,835,904	206,789	4,123,587	22,330,174
Net rents	2,567,775	2,265,760	(7,561,030)	(165,747)	(2,257,238)	(9,818,130)
Net railway operating income	17,554,219	18,892,313	18,697,485	61,361	4,746,043	87,977,719
Other income						
Income for lease of road and equipment	44,720	9,175	8,895	1,762		57,452
Miscellaneous rent income	2,824,106	872,879	1,268,196	13,344	327,272	4,304,793
Income from nonoperating property	8,856,794	883,943	434,564	15,290	328,879	10,519,930
Separately operated properties--profit						
Dividend income	6,620,647	7,301,747	572,401			14,594,135
Interest income	3,919,421	4,826,863	2,586,588	747	358,313	12,794,932
Income from sinking and other reserve funds	341,723	86,671			3,607	432,001
Release of premiums on funded debt						
Miscellaneous income	1,801,910	380,639	1,478,308	96,226	34,730	3,791,871
Total other income	25,408,321	14,358,919	5,337,750	126,369	1,053,801	46,705,634
Total income	42,962,540	33,251,232	24,035,235	187,730	5,799,844	134,683,353
Miscellaneous deductions from income						
Miscellaneous rents	29,761	71,111	40,861	661	3,681	146,075
Miscellaneous tax accruals	1,040,445	276,279	213,434	24,987	49,211	1,588,316
Separately operated properties-loss		6,243	4,653			10,896
Miscellaneous income charges	3,010,620	863,641	518,313	23,626	32,854	4,355,264
Total miscellaneous deductions	4,080,826	1,217,274	777,261	49,274	85,746	6,110,381
Income available for fixed charges	38,881,714	32,033,958	23,257,974	138,456	5,714,098	127,573,204
Fixed charges						
Rent for leased road and equipment	48,641	2,618	93,383	----------	35,902	240,932
Interest on funded debt	22,479,521	8,768,453	9,297,477	----------	1,992,747	31,470,198
Interest on unfunded debt	2,060	129	18,629	----------	----------	21,817
Amortization of discount on funded debt	161,620	173,319	186,793	----------	----------	522,027
Total fixed charges	22,691,841	8,944,519	9,596,282	----------	2,028,649	32,259,991
Income after fixed charges	16,189,873	23,089,439	13,661,692	138,456	3,685,449	95,313,213
Operating ratio (percent)	90.54	93.49	90.10	93.38	74.45	94.91

( ) Denotes credit

APPENDIX H

Earnings per share common stock, dividends, and dividends declared for Great Northern, Northern Pacific, and Burlington for the years 1951 to 1966

Year	Great Northern	Northern Pacific	Burlington
Earnings per share common stock			
1951	$3.91	$2.68	$14.78
1952	4.55	2.66	16.39
1953	4.92	2.61	15.02
1954	4.21	2.41	13.47
1955	5.27	3.22	12.97
1956	5.32	3.52	12.62
1957	4.38	3.54	10.06
1958	4.52	3.68	11.41
1959	4.35	3.97	10.36
1960	3.41	3.10	7.31
1961	3.07	2.72	8.43
1962	4.12	3.39	11.95
1963	4.80	4.09	12.51
1964	4.71	3.90	11.91
1965	5.01	4.65	9.77
1966	5.94	5.08	13.94
Dividends declared per share common stock			
1951	2.00	1.25	7.00
1952	2.00	1.50	7.50
1953	2.00	1.50	7.50
1954	2.10	1.50	7.50
1955	2.35	1.58	7.50
1956	2.68	1.50	7.50
1957	3.00	1.63	7.50
1958	3.00	1.67	7.50
1959	3.00	2.00	7.50
1960	3.00	2.20	7.50
1961	3.00	2.20	7.50
1962	3.00	2.20	7.50
1963	3.00	2.35	7.50
1964	3.00	2.50	7.50
1965	3.00	2.50	7.50
1966	3.00	2.60	7.50
Total dividends declared			
1951	12,360,044	6,199,275	11,958,709
1952	12,172,714	7,439,130	12,812,902
1953	12,172,938	7,439,130	12,812,902
1954	12,724,524	7,439,130	12,812,902
1955	14,265,083	7,812,663	12,812,902
1956	15,910,652	9,433,343	12,812,902
1957	18,214,028	9,442,385	12,812,902
1958	18,250,025	[1]53,176,149	12,812,902
1959	18,310,154	12,263,673	12,812,902
1960	18,298,929	13,174,431	12,812,902
1961	18,236,342	13,186,261	12,812,902
1962	22,776,124	14,093,629	12,812,902
1963	18,263,528	14,118,722	12,812,902
1964	18,348,813	15,052,747	12,812,902
1965	18,409,694	14,772,270	12,812,902
1966	18,456,558	15,698,550	12,812,902

[1] Includes 20 percent stock dividend of $42,726,362.

APPENDIX I

Burlington Truck Lines, Inc.

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Assets

Current assets:		
Cash		$240,231
Working fund		3,025
Special deposits		20,228
Temporary cash investments		797,187
Receivables from affiliated companies		-------
Accounts receivable-agents, customers and interline		1,026,231
Accounts receivable-other		12,831
Prepayments		509,944
Material and supplies		212,929
Total current assets		2,822,606
Tangible property:		
Carrier operating property	$10,886,564	
Less reserve for depreciation	5,643,175	
		5,243,389
Intangible property:		
Organization, franchises		3,484
Other intangible property	328,572	
Less reserve for amortization	182,276	
Total other intangible property		146,296
Total intangible property		149,780
Investment securities and advances:		
Other investments and advances		11,727
Deferred debits:		
Other deferred debits		151,770
Miscellaneous debit items:		
Commission and expense on capital stock		825
Total assets		8,380,097

Liabilities

Current liabilities:		
Payables to affiliated companies		2,990,738
Accounts payable		638,772
Wages payable		220,196
C.o.d.'s unremitted		37,589
Taxes accrued		173,641
Other current liabilities		481,363
Total current liabilities		4,542,299
Long-term debt due within 1 year:		
Equipment obligations	758,041	
Other debt due within 1 year	37,279	795,320

Burlington Truck Lines, Inc.

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Liabilities—Continued

Advances payable—affiliated companies		$405,267
Equipment and other long-term obligations		1,691,241
Deferred credits—others		10,666
Injuries, loss and damage reserve		106,408
Capital stock common		750,000
Surplus:		
Earned surplus	$774,547	
Income account current year	(695,651)	78,896
Total liabilities and shareholders' equity		8,380,097

Northern Pacific Transport Company

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Assets

Current assets:		
Cash		$19,977
Working funds		500
Temporary cash investments		296,061
Receivables from affiliated companies		512,145
Accounts receivable—agents, customers and interline		160,879
Accounts receivable—other		331,871
Interest and dividends receivable		1,317
Prepayments		195,350
Material and supplies		222,780
Other current assets		1,800
		1,742,680
Tangible property:		
Carrier operating property	$5,296,102	
Less reserve for depreciation	2,489,487	
Total tangible property		2,806,615
Noncarrier property	3,232,511	
Less reserve for depreciation other property	1,452,532	
Total noncarrier property		1,779,979
Intangible property:		
Organization, franchises and permits		3,638
Other intangible property	143,195	
Less reserve for amortization	24,568	
Total other intangible property		118,627
Total intangible property		122,265
Investment securities and advances:		
Investments and advances—affiliated companies		20,250
Other investments and advances		818

Northern Pacific Transport Company

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Assets—Continued

Deferred debits:	
Other deferred debits	$85,986
Miscellaneous debit items:	
Commission and expense on capital stock	549
Total assets	6,559,142

Liabilities

Current liabilities:	
Notes payable	97,448
Accounts payable	599,474
Wages payable	133,897
Interest payable	1,363
Taxes accrued	220,607
Interest accrued	252,167
Total current liabilities	1,306,171
Long-term debt due within 1 year:	
Notes payable	161,074
Advances payable—affiliated companies	556,665
Equipment and other long-term obligations:	
Notes payable	306,252
Deferred credits	3,028
Capital stock common	500,000
Surplus:	
Other capital surplus $868,594	
Earned surplus 2,406,042	
Credit balance transferred from income 451,316	3,725,952
Total liabilities and shareholders' equity	6,559,142

Superior & Duluth Transfer Company1

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Name of account	Amount	Total
Assets		
Current assets:		
Cash, working funds and deposits	$13,879	
Accounts receivable	31,132	
Prepayments	4,940	
Materials and supplies	823	
Total current assets		$50,774

See footnotes at end of table

Superior & Duluth Transfer Company[1]

GENERAL BALANCE SHEET—DECEMBER 31, 1966

Name of account		Amount	Total
Assets—Continued			
Investments:			
Carrier operating property	$64,979		
Less: Accrued depreciation	63,352		
Total operating property		1,627	
Total investments			$1,627
Deferred debits:			
Other deferred debits			887
Total assets			53,238
Liabilities			
Current liabilities:			
Accounts payable	11,436		
Notes payable	5,000		
Taxes accrued	494		
Total current liabilities			16,930
Advance payable:			
Advances payable-Great Northern Railway			41,729
Capital stock:			
Common capital stock			35,000
Corporate surplus			(40,421)
Total liabilities and shareholders' equity			53,238

[1]Name changed to: Superior Transfer Company.
( ) Denotes deficit.

APPENDIX J

Description of extensions of lines of railroad to permit economical and efficient operation of properties sought to be unified under section 5(2) of the act in F. D. No. 21478, for which authority to construct and operate is sought under sections 1(18) to 1(20) of the act in F. D. No. 21480:

(1) Connecting track, approximately 1,460 feet in length, extending between N. P. Milepost 8.73 and G. N. Milepost 8.03, at Superior, Douglas County, Wis.

(2) Connecting track, approximately 2,260 feet in length, extending between N. P. Milepost 74.91 and G. N. Milepost 72.63, at Hinckley, Pine County, Minn.

(3) Connecting track, 303 feet in length, extending between G. N. Milepost 117.62 and N. P. Milepost 37.08, at Sauk Centre, Stearns County, Minn.

(4) Connecting track, 835 feet in length, extending between N. P. Milepost 165.32 and G. N. Milepost 56.04, at Wadena, Wadena County, Minn.

(5) Connecting track, 1,375 feet in length, extending between N. P. Milepost 73.46 on the Wadena, Minn.-Oakes, N. Dak., branch line and G. N. Milepost 213.38 on the St. Paul, Minn.-Seattle, Wash., main line of Great Northern, at Breckenridge, Wilkin County, Minn.

(6) Connecting track, 2,035 feet in length, extending between Great Northern Fargo-Minot main line at G. N. Milepost 24.7 and existing Great Northern yard trackage in 22nd Street, at Fargo, Cass County, N. Dak.

(7) Connecting track, 1,800 feet in length, extending between N. P. Milepost 5.59 and G. N. Milepost 21.59, at Moorhead, Clay County, Minn.

(8) Connecting track, 1,480 feet in length, extending between G. N. Milepost 42.33 on Great Northern Wahpeton-Moorhead main line and G. N. Milepost 21.18 on Great North St. Cloud-Moorhead, Minn., main line at Moorhead, Clay County, Minn.

(9) Connecting track, 1,550 feet in length, extending between G. N. Milepost 21.18 and N. P. Milepost 5.59, at Moorhead, Clay County, Minn.

(10) Connecting track, 1,365 feet in length, extending between N. P. Milepost 69.54 on the Northern Pacific Crookston-Grand Forks branch lines and G. N. Milepost 83.38 on the Great Northern Crookston-

Grand Forks main line at Crookston, Polk County, Minn.

(11) Connecting track, 1,415 feet in length, extending between G. N. Milepost 1.24 on Great Northern Grand Forks-Grafton branch line and N. P. Milepost 96.44 on Northern Pacific Grand Forks-Grafton branch line, at Grand Forks, Grand Forks County, N. Dak.

(12) Connecting track, 700 feet in length, extending between G. N. Milepost 1.4 in Great Northern Grand Forks-Grafton branch line and N. P. Milepost 96.68 on Northern Pacific Grand Forks branch line, at Grand Forks, Grand Forks County, N. Dak.

(13) Connecting track, 5,550 feet in length, extending between G. N. Milepost 105.82 on Great Northern Grand Forks-Crookston line and N. P. Milepost 93.75 on Northern Pacific Grand Forks-Crookston line, at East Grand Forks, Polk County, Minn.

(14) Connecting track, 2,020 feet in length, extending between N. P. Milepost 27.95 on Northern Pacific main line and G. N. Milepost 54.24 on Great Northern Breckenridge-Minot main line, at Casselton, Cass County, N. Dak.

(15) Connecting track, 4,615 feet in length, extending between G. N. Milepost on Great Northern Great Falls-Butte line and N. P. Milepost 2.85 on Northern Pacific main line, at Helena, Lewis and Clark County, Mont.

(16) Connecting track, 2,600 feet in length, extending between N. P. Milepost 2.51 on Northern Pacific main line and connecting track described in (15) above, at Helena, Lewis and Clark County, Mont.

(17) Connecting track, 3,309 feet in length, extending between G. N. Milepost 1401.66 on Great Northern main line and present transfer track at Sandpoint, Bonner County, Idaho.

(18) Connecting track, 2,338 feet in length, extending between N. P. Milepost 2.50 on Northern Pacific main line and present transfer track, at Sandpoint, Bonner County, Idaho.

(19) Connecting track, 6,568 feet in length, extending between N. P. Milepost 1.18 on Northern Pacific main line on westerly side of Spokane, and SP&S Mileposts 374.72 and 375.17 wye connections, including construction of bridge over Latah Creek, at Spokane, Spokane County, Wash.

(20) Connecting track, 2,540 feet in length, extending between G. N. Milepost 1497.94 on Great Northern main line and N. P. Milepost 13.75 on Northern Pacific Washington Central branch line, near Espanola, Spokane, Wash.

(21) Connecting track, 2,700 feet in length, extending between SP&S Milepost 368.66 and Northern Pacific Milepost 8.86, at Marshall, Spokane County, Wash.

(22) Connecting track, 880 feet in length, extending between N. P. Milepost 26.89 on Northern Pacific branch line and G. N. Milepost 45.75 on Great Northern Colfax branch, at Rosalia, Whitman County, Wash.

(23) Connecting track, 4,400 feet in length, extending between N. P. Milepost 89.17 on Northern Pacific main line and Pacific Coast R. R. branch line at Milepost 27.34, at Henry's, King County, Wash.

(24) Connecting track, 2,320 feet in length, extending between N. P. Milepost 5.09 on joint NP-SP&S main line and SP&S Milepost 139.45, at Willbridge, Mutnomah County, Oreg.

APPENDIX K

Description of portions of existing lines of railroad for which authority to abandon is sought under section 1(18) to 1(20) of the act, contingent upon consummation of transactions for which authority is sought under section 5(2) of the act in F. D. No. 21478:

(1) Removal of 1,649 feet of track, extending between N. P. Milepost 73.15 and N. P. Milepost 73.46 on Northern Pacific branch line Wadena-Oakes, at Breckenridge, Wilkin County, Minn., after construction of connecting track for which authority is sought as described in paragraph (5) of appendix J.

(2) Removal of approximately 2,000 feet of track, extending between G. N. Milepost 42.33 and G. N. Milepost 42.71 on Great Northern Line between Wahpeton and Moorhead, at Moorhead, Clay County, Minn., after construction of connecting track for which authority is sought as described in paragraph (8) of appendix J.

(3) Removal of approximately 10,404 feet of track, extending between G. N. Milepost 210.44 and G. N. Milepost 212.41 on Great Northern Great Falls-Butte line, at Helena, Lewis and Clark County, Mont., after construction of connecting tracks for which authority is sought as described in paragraphs (15) and (16) of appendix J.

(4) Removal of approximately 18,543 feet of track, extending between G. N. Milepost 1477.79 and G. N. Milepost 1479.35 on Great Northern main line, at Spokane, Spokane County, Wash., after construction of connecting track for which authority is sought as described in paragraph (19) of appendix J.

(5) Removal of approximately 1,300 feet of track, extending between SP&S Milepost 376.89 and SP&S Milepost 376.63, at Fort Wright, Spokane County, Wash., after construction of connecting track for which authority is sought as described in paragraph (19) of appendix J.

(6) Removal of approximately 7.7 miles of line extending between N. P. Milepost 1.18 and N. P. Milepost 8.86 on Northern Pacific main line, between Spokane and Marshall, Spokane County, Wash., after construction of connecting track for which authority is sought as described in paragraphs (19) and (21) of appendix J.

(7) Removal of approximately 4,000 feet of connecting track, between N. P. Milepost 8.90 and SP&S Milepost 367.50, at Scribner, Spokane County, Wash., after removal of track described in (5) above.

APPENDIX L

1. Upon consummation of the transaction in whole or in part, NuCo shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless otherwise mutually agreed upon by the carriers affected or otherwise authorized by this Commission.

2. The present neutrality of handling inbound, outbound and overhead traffic by the merged and leased railroads shall be continued by NuCo so as to permit equal opportunity for service to, from, and via all lines reaching its rails without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

3. Existing traffic and operating relationships, including contracts, between any of the merged and leased railroads, on the one hand, and, on the other, all lines connecting with their tracks, shall be continued insofar as such matters are within the control of NuCo.

4. NuCo shall accept, handle and deliver all cars inbound and outbound and in overhead or switching service, loaded and empty, without discrimination in promptness or frequency of service and irrespective of origin or destination or route of movement.

5. NuCo shall do nothing to restrain or curtail the right of industries served by it or the merged and leased lines to route traffic over any or all available routes and gateways.

6. Any party or any person having an interest in the subject matter may, at any future time, make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained by this Commission to reopen these proceedings pursuant thereto or on our own motion.

7. NuCo and Southern Pacific shall join in the establishment and maintenance of joint through rates via Klamath Falls, Oreg., on bases no less favorable

than via other routes, on all traffic to and from points on their lines, and their short-line connections. NuCo shall observe strict neutrality between the Bieber, Calif., and Klamath Falls gateways as to solicitation of traffic, regardless of origin or destination. NuCo and Southern Pacific shall conduct operations without discrimination or limitation, including the furnishing of specialized equipment, switching services, and the maintenance of train schedules so as to handle traffic interchanged between them at Klamath Falls in a prompt and expeditious manner and in no respect with less favorable treatment than is accorded by NuCo on traffic handled via Bieber or by Southern Pacific on traffic handled via Portland, Oreg.

8. NuCo and Southern Pacific shall establish and maintain joint through rates via Portland to and from all points to the same extent as hereafter established via Klamath Falls and shall conduct operations via Portland without discrimination or limitation, including the furnishing of specialized equipment, switching services and maintenance of train schedules, said service to be equal or superior to that presently provided by Northern Pacific and Southern Pacific in operating via Portland.

9. Southern Pacific, following the effectuation of condition 24 hereinafter, shall solicit all traffic to and from Oregon, Washington, northern Idaho and British Columbia, as follows:

(a) From and to territory north of Los Angeles, Calif., Southern Pacific shall observe strict neutrality between Union Pacific, NuCo and the Milwaukee.

(b) From and to territory Los Angeles and south and east thereof served in common by Union Pacific and Southern Pacific and where Union Pacific now maintains or may maintain rates via its Salt Lake line that are competitive with Southern Pacific through Portland, Southern Pacific shall solicit all traffic in favor of NuCo and the Milwaukee, without preference as between them.

(c) From and to territory Los Angeles and south and east thereof except as provided in paragraph (b), immediately above, Southern Pacific shall observe strict neutrality between Union Pacific, NuCo and the Milwaukee.

10. NuCo and Western Pacific shall join with each other and with Santa Fe in establishing and maintaining joint through rates via Bieber, Calif., on bases no less favorable than via other routes, on all traffic between points in Washington, Oregon, Idaho and British Columbia located on the lines of NuCo and its connections, on the one hand, and, on the other, points on the lines of (1) Western Pacific and its short-line connections in California, Nevada and Utah; (2) points in California, Arizona, New Mexico, Texas, and Louisiana on the lines of Santa Fe and its short-line connections; and (3) Rio Grande in Utah; and on transcontinental traffic between points other than those described above, the rates via Bieber shall be maintained on bases equal to the rates applicable via all other routes between points on the lines of NuCo and all transcontinental origins or destinations to the same extent as provided via Bieber in Trans-

Continental Freight Bureau Tariff No. 5 series, I.C.C. 1576.

11. With respect to all traffic described in paragraph 10, via routes from, to, or through California, NuCo shall preferentially solicit for its Inside Route (i.e., via either Klamath Falls, Oreg., or Bieber) and shall not by any means, including the adjustment of divisions of freight revenue, give preference to its route via Portland; and NuCo and Western Pacific shall observe practices, including those with respect to solicitation and the adjustment of divisions of freight revenue, which will afford to the Bieber route no less favorable an opportunity than the Klamath Falls route to share in the traffic moving between the areas described in paragraph 10, immediately above. As used in this paragraph, the term Klamath Falls route or gateway includes, and the provisions thereof shall cover traffic interchanged at Chemult, Oreg., a point on the Klamath Falls route.

12. NuCo and Western Pacific shall conduct operations via Bieber without discrimination or limitation, including the furnishing of specialized equipment, switching services, and the maintenance of train schedules so as to handle traffic interchanged between them there in a prompt and expeditious manner and NuCo shall accord such traffic no less favorable treatment than it accords traffic interchanged with connecting lines at Klamath Falls, Chemult, or Portland.

13. Western Pacific shall solicit all traffic to and from Oregon, Washington, northern Idaho and British Columbia via the Bieber route and in favor of NuCo

and the Milwaukee, without preference as between them.

14. NuCo and Santa Fe (and its Texas subsidiaries) shall join with each other and with Western Pacific in establishing and maintaining joint through rates via Bieber on bases no less favorable than via other routes, on all traffic between points in Washington, Oregon, Idaho, and British Columbia located on the lines of NuCo and its connections, on the one hand, and, on the other, points in California, Arizona, New Mexico, Texas and Louisiana on the lines of Santa Fe and its short-line connections; and on transcontinental traffic between points other than those described above, the rates via Bieber shall be maintained on bases equal to the rates applicable via all other routes between points on the lines of NuCo and all transcontinental origins or destinations to the same extent as provided via Bieber in Transcontinental Freight Bureau Tariff No. 5 series, I.C.C. 1576.

15. With respect to all traffic described in paragraph 14, via routes from, to, or through California, NuCo shall preferentially solicit for its Inside Route (i.e., via Klamath Falls or Bieber) and shall not by any means, including the adjustment of divisions of freight revenue, give preference to its route via Portland; and NuCo and Santa Fe shall observe practices, including those with respect to solicitation and the adjustment of divisions of freight revenue, which will afford the Bieber route no less favorable an opportunity than the Klamath Falls route to share in the traffic moving between the areas described in paragraph 14. As used in this paragraph, the term Klam-

ath Falls route or gateway includes, and the provisions hereof cover, traffic interchanged at Chemult, a point on the Klamath Falls route.

16. NuCo and Santa Fe shall join with Western Pacific in conducting operations via Bieber without discrimination or limitation, including the furnishing of specialized equipment, switching services, and the maintenance of train schedules so as to handle traffic interchanged between them there in a prompt and expeditious manner and NuCo shall accord such traffic no less favorable treatment than it accords traffic interchanged with connecting lines at Klamath Falls, Chemult, or Portland.

17. NuCo shall establish and maintain joint rates with Western Pacific and its connections, via Bieber, and with the Milwaukee, via Portland and via Vancouver, Wash., between all points on the Milwaukee and its connections, on the one hand, and, on the other, all points on Western Pacific and its connections, on bases no less favorable than shall apply from time to time via the Milwaukee and Southern Pacific via Portland.

18. NuCo shall establish and maintain joint rates with Western Pacific and its connections, via Bieber, and with Union Pacific, via Ben, Oreg., and via Vancouver, Wash., between all points on Union Pacific and its connections in the Pacific Northwest, on the one hand, and, on the other, all points on Western Pacific and its connections, on bases no less favorable than shall apply from time to time via Union Pacific and Southern Pacific via Portland.

19. The Milwaukee, as a condition to its securing trackage rights over the lines of NuCo between Longview Junction, Wash., and Portland, Oreg., between Renton and Snohomish, Wash., and between Everett and Bellingham, Wash., shall:

(a) Establish and maintain joint rates via Portland, Oreg., and Vancouver, Wash., with NuCo and with Western Pacific and its connections, via Bieber, between all points located on the Milwaukee and its connections, on the one hand, and, on the other, all points on Western Pacific and its connections, on bases no less favorable than shall apply from time to time via the Milwaukee and Southern Pacific via Portland, and

(b) Maintain in connection with freight traffic moving via the Bieber route freight train schedules and service no less favorable than it shall contemporaneously maintain in connection with Southern Pacific via Portland.

20. The Milwaukee, as a condition to its securing various gateways and trackage rights herein:

(a) In connection with freight traffic moving from, to, or via any point located on its lines (or which in the future may be located on its lines or the lines of its successor as a result of merger or consolidation of trackage rights or lease or an extension of line) in Illinois, Missouri, Iowa, Wisconsin, Michigan, and Kansas, on the one hand, and, on the other, points in California north of and including Caliente and Santa Margarita, shall: (1) join with its connections in maintaining via the various central transcontinental

routes freight train schedules and service at least equal in all respects to the freight train schedules and service contemporaneously maintained by the Milwaukee and its connections between such territories via any of the northern transcontinental routes, (2) join with its connections in maintaining via the various central transcontinental routes joint through rates on bases no less favorable than those which the Milwaukee shall join with its connections in maintaining via any of the northern transcontinental routes, and (3) cooperate with its western connections to secure by active solicitation the routing of the maximum of freight traffic via the various central transcontinental routes and shall route unrouted traffic via such routes, and

(b) In connection with freight traffic moving from, to, or via any points located on its lines (or which in the future may be located on the lines of its successor as a result of merger or consolidation of trackage rights or lease or an extension of line) in Illinois, Missouri, Iowa, Wisconsin, Michigan, and Kansas, on the one hand, and, on the other, points in Oregon and Washington and the Province of British Columbia, shall join with its connections in maintaining via the various central transcontinental routes joint through rates on bases no less favorable than those which the Milwaukee contemporaneously shall maintain, or shall join with its connections in maintaining, via any of the northern transcontinental routes.

21. NuCo and Soo Line shall, subject to any necessary approval of this Commission, promptly enter into and execute the agreements indicated below and shall

thereafter prepare and file with this Commission any and all required applications and supporting evidence to:

(a) Amend that certain contract dated September 18, 1959, between Great Northern and Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, covering coordination of certain lines of Great Northern and Soo Line between Lignite, N. Dak., and Crosby, Minn., and Hankinson and Geneseo, N. Dak., approved by order of this Commission dated January 28, 1960, in Finance Docket No. 20837, so as to give Soo Line the full and equal joint use of the "Crosby Joint Section" as that term is defined in said contract, and all spur tracks.

(b) Amend that certain contract dated July 5, 1955, between Great Northern and Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, covering coordination of certain lines of Great Northern and Soo Line between Schley and Bemidji, Minn., and between New Aberdeen Line Junction, Minn., and Hankinson, N. Dak., approved by order of this Commission dated December 6, 1955, in F. D. No. 18992, so as to give Soo Line the full and equal joint use of the "Cass Lake Joint Section" as that term is defined in said contract, and all spur tracks.

(c) Amend that certain contract dated April 15, 1929, between Northern Pacific and Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, pooling Northern Pacific and Soo Line traffic on iron ore tonnage originating on the Cuyuna Range, approved by order of this Commission dated June 3, 1929, in F. D. No. 7569 (154 I.C.C. 279) in the following respects:

1. The first 500,000 tons of ore transported from the Cuyuna Range yearly shall be divided 75 percent Soo Line and 25 percent NuCo; tons exceeding 500,000 shall be divided equally.

2. Soo Line's share of the Cuyuna car pool will be fulfilled by Soo Line's furnishing a minimum of 375 seventy- or seventy-five-ton cars and any deficiency during the first 10 ore shipping seasons after coordination of Allouez dock shall be made up with 70-ton cars furnished by NuCo at a per diem rate of $1 during said seasons.

3. The obligation of Soo Line to pay $7,850 annually on account of abandonment of its line between Lawler and East Lake shall be canceled.

4. Soo Line shall be admitted on fair and equitable terms to the use of NuCo yards and docks at Allouez, and a rail connection will be installed at Saunders to handle Soo Line ore.

(d) Authorize Soo Line, on fair and equitable terms, to use the existing Great Northern trackage between Soo Line's Shoreham Yard and the easterly end of Great Northern's Union Yard, including necessary yard tracks, so that Soo Line can make direct interchange with The Minnesota Transfer Railway Company and the Chicago, Rock Island and Pacific Railroad Company.

22. Following consummation of the transactions for which authority under section 5(2) of the act is sought, NuCo and Soo Line shall continue their cooperative efforts to find ways and means of jointly providing improved service to the shipping public by

eliminating delay and reducing costs and to that end the parties shall consider the installation of automatic interlockers at various crossings now manually operated and coordination of additional lines where practical on the basis set forth in the contracts dated September 18, 1959, and July 5, 1955, further described in paragraphs 21(a) and 21(b) above.

23. NuCo shall publish and file appropriate tariffs and routing schedules to be effective on and after the date of consummation of the merger, providing for the opening of junctions and gateways at Linton and Fargo, N. Dak., and Missoula, Mont., and Spokane, Seattle, and Tacoma, Wash., with respect to traffic moving through said junctions, at the lowest applicable rates available via the Twin Cities and Sioux City gateways (on a reciprocal basis, with the Milwaukee affording equal privileges to NuCo) with just and reasonable divisions thereof as may be agreed upon, or fixed by this Commission if such carriers cannot so agree, and the Milwaukee shall, on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open, in similar manner, its junctions at Twin Cities, Sioux City, and Council Bluffs with North Western, and on traffic obtained pursuant to this condition or those in paragraph 24 below, open or keep open in similar manner its junction at Twin Cities with Soo Line.

Routing via the 11 first-named gateways so opened shall be restricted to one such gateway on any single shipment, and to traffic destined to or billed for transit or stopoff at any station on the other line beyond

the junction up to and including the terminal area of the next junction, except that routing via Linton and Fargo shall be provided to and from Billings and Great Falls, Mont., and stations intermediate thereto.

24. At the request of the Milwaukee, presented in writing not more than 6 months after date of consummation of the unification authorized herein or not more than 6 months after the effective date of any certificate or order of this Commission:

(a) Permitting that railroad to extend its operations to Portland, Oreg., and to acquire trackage rights over the line of NuCo between Longview Junction, Wash., and Portland, Oreg., NuCo shall grant to the Milwaukee, upon such fair and reasonable terms as the parties may agree or as determined by this Commission in the event of their inability to agree, trackage rights to operate freight trains over NuCo lines between Longview Junction and Portland, including the right to serve on an equal basis all present and future industries at Portland and intermediate points and the use of NuCo facilities at Portland necessary for the switching of traffic to other railroads and industries. NuCo shall maintain Portland as an open gateway on a reciprocal basis with the Milwaukee to the same extent as with other connecting carriers;

(b) Permitting that railroad to acquire trackage rights over the lines of NuCo between Renton and Snohomish, Wash., and between Everett and Bellingham, Wash., NuCo shall grant to the Milwaukee, upon such fair and reasonable terms as parties may

agree or as determined by this Commission in the event of their inability to agree, trackage rights to operate freight trains over NuCo lines between Renton and Snohomish, and between Everett and Bellingham; and

(c) Permitting that railroad to extend its service to Billings, Mont., and the handling of its traffic by NuCo from and to Judith Gap, Miles City, and Bozeman, Mont., on the one hand, and, on the other, to, from, and through Billings, Mont., including the switching of cars to or from industries at Billings, NuCo shall impartially handle the empty and loaded cars of that railroad from, to, and through Billings as though a station on the other road, such cars to be delivered to and returned by NuCo at Miles City, Judith Gap, or Bozeman, according to the direction of the traffic, upon such fair and reasonable terms as the parties may agree or as may be determined by this Commission in the event of their inability to agree.

25. NuCo shall join with the Milwaukee in:

(a) Eliminating at their common points the dual basis of switch charges by canceling in their respective tariffs the higher switch charges required to be paid when absorbed by the line-haul carrier, and by providing in their respective tariffs for the absorption by the line-haul carrier of switch charges on all traffic, subject to a reasonable minimum carload revenue, and

(b) Reestablishing rate relationships via all routes with that railroad when, by reason of this unification,

the relationships of rates via such routes with rates via other routes of the component lines merged into or operated under lease by NuCo are disturbed.

26. NuCo shall (1) establish and maintain competitive joint rates and routes with North Western, reciprocally, on a reasonably related divisional basis (a) via Oakes, N. Dak., as specified in sheet 3 of appendix N-9 of the examiner's report in F. D. No. 21478, with exceptions and upon terms as mutually agreed upon between said railroads, and (b) via Crawford, Nebr., as specified in sheet 4 of appendix N-9 of the examiner's report in F. D. No. 21478, with exceptions and upon terms as mutually agreed upon by said railroads, to the extent that Great Northern, Northern Pacific, or Burlington now have or to the extent that NuCo shall have joint rates and routes (A) via Laurel-Billings, Mont., through Crawford and Ellsworth, Nebr., or (B) on traffic moving from or to former Burlington lines in Montana, Wyoming, and South Dakota through Alliance, Nebr., (2) maintain connecting service schedules and interchange service at Oakes and Crawford so as to provide an efficient and effective service to the shipping public, (3) maintain efficient and effective service between Oakes, N. Dak., and Jamestown, N. Dak., for through traffic which is reasonably consistent with the service, including schedules provided by North Western between Huron, S. Dak., and Oakes, N. Dak., and (4) pick up and set out through cars (originating or terminating at points beyond Edgement, S. Dak., or Alliance, Nebr.) at Crawford in its through trains so

as to provide efficient and effective service on such through traffic.

27. NuCo shall deliver Minneapolis interchange cars to the North Western at the latter's Cedar Lake and East Minneapolis Yards separated as between the two yards as that railroad may designate, and shall accept deliveries of Minneapolis interchange traffic therefrom at NuCo's Lyndale Yard, Union Yard and Northtown Yard (when it is placed in operation).

28. NuCo shall permit North Western to operate trains between Minneapolis and St. Paul, Minn., over track now owned by Great Northern known as the "Short Line" without restriction as to character or origins and destinations of the traffic in the trains using the line, and shall subject to terms mutually agreed upon (1) offer to rescind all or any part of the contract between North Western and Northern Pacific governing use by North Western of trackage of Northern Pacific between Minneapolis (20th Avenue South) and St. Paul (otherwise known as Line A), and (2) provide for partial use of that line by North Western on mutually agreeable terms, cancellation of such agreement on 90 days' notice, and in the event of such cancellation, provide for use of alternate routes which would permit North Western equivalent service, including, but not limited to, the right for North Western and Chicago Great Western Railway Company to make direct interchange in the vicinity of St. Anthony Tower, or for North Western to provide direct service to St. Anthony Tower in the

event the transactions approved in F. D. No. 23388, et al. are consummated.

29. NuCo shall (1) offer to least to North Western, upon terms mutually agreeable, its tracks in Union Yard in Minneapolis, as follows: (a) track E-4 from its commencement on the east to a connection to be constructed at a point approximately 800 feet west of 10th Avenue S. E. Minneapolis, and (b) tracks C-29 and C-30 from a point on the east end where they join track Q-13 to the point where they join track E-4, (2) subsequent to consummation of the unification construct a connection between the leased tracks and Great Northern main line track 1 in its yard and a connection between Great Northern tracks in the vicinity of the point where tracks C-29 and C-30 enter into track Q-13, and such other change as necessary to give North Western access to the leased tracks, and (3) after Northtown Yard is placed in operation, consider leasing track Q-13 from its point of connection with tracks C-29 and C-30 to the crossover in vicinity of St. Anthony Tower semaphore.

30. NuCo shall (1) grant such trackage rights at Duluth, Minn., to Duluth, Winnipeg & Pacific Railway, upon terms mutually agreeable, as will permit the latter to handle through traffic between the present connection of that railroad and Northern Pacific in Duluth to the connection of the North Western and Northern Pacific in Duluth, and (2) grant such trackage rights to North Western at Head of the Lakes, upon terms mutually agreeable as will permit the latter to handle such traffic over St. Louis Bay Bridge and related facilties.

31. Railroad interveners, as beneficiaries under the conditions herein imposed upon them and upon applicants as conditions precedent or subsequent to consummation of the authority granted herein, shall cooperate with each other and with applicants in order that these conditions be given full effect. Such cooperation shall, where practicable, take the form of agreements to be entered into by the parties within 180 days from the effective date of this order, or within such other period as this Commission may specify. The failure to so cooperate shall, upon the filing of an appropriate pleading by an aggrieved party hereto, be considered by this Commission as the assent by the party failing to so cooperate to modification or cancellation of such condition or conditions benefiting such party. Nothing in this paragraph shall be deemed to affect the consummation by applicants of the authority herein granted.

32. All motor-carrier operating authority (under part II of the Interstate Commerce Act) coming under the control of NuCo as a result of these proceedings shall be amended by the addition of a condition reserving the right of this Commission to impose such future conditions as it may find necessary to insure operation in the public interest under such authority.

33. The Commission shall retain jurisdiction over these proceedings for a period of 5 years following consummation of the transactions herein authorized, for the purpose, among others, of considering petitions, under section 5(2)(d) of the act, by any railroad in the territory involved requesting inclusion in

the merger so authorized. The Commission shall also retain jurisdiction over these proceedings for a period of 5 years following consummation of the transactions herein authorized to impose such just and reasonable conditions upon petition by any party in interest, or on its own motion, after hearing, as may be necessitated by any cumulative or crossover problems stemming from approval of this merger and any other transaction authorized under section 5 with respect to the territory involved. Consummation of the transactions herein authorized shall constitute irrevocable assent by applicants to the power of this Commission to impose, after hearing, such just and reasonable conditions as may be necessary or appropriate.

34. NuCo shall be required to provide employees not now covered and to the extent contemplated under section 5(2)(f) of the act with the basic protection as particularly described in the contract entered into between applicants and the Brotherhood of Locomotive Engineers and Brotherhood of Railway Trainmen. NuCo shall apprise the affected employees of the protection provided herein, as more fully set out in this report.

ORDER ON RECONSIDERATION

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the day of 1967.

Finance Docket No. 21478

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Finance Docket No. 21479

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.—STOCK ISSUANCE, ETC.

Finance Docket No. 21480

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. ET AL.—CONSTRUCTION AND ABANDONMENT

Investigation of the matters and things involved in these proceedings having been made, hearing, further hearing, and oral argument having been held, and the Commission on the date hereof, having made and filed a report on reconsideration containing its findings of fact and conclusions thereon, which report, the report of the Commission, dated March 31, 1966, 328 I.C.C. 460, and the report of the hearing examiner, are hereby referred to and made a part hereof:

It is ordered, On reconsideration, that subject to the terms and conditions set forth in said report in Finance Docket No. 21478, merger of the operations, properties and franchises, including motor carriers' operating rights, of Great Northern Railway Com-

pany, Northern Pacific Railway Company, and Pacific Coast R. R. Co., and Chicago, Burlington & Quincy Railroad Company, into Great Northern Pacific & Burlington Lines, Inc., for ownership, management and operation; and acquisition by the latter (a) through ownership of stock, of sole or joint control of carriers subsidiary to or affiliated with the merging railroads and of all leasehold rights, trackage rights, and joint ownership in or joint use of any railroad line or lines and terminals incident thereto possessed by said merging carriers; (b) lease by Great Northern Pacific & Burlington Lines, Inc., of the lines or railroad and other properties owned, used, or operated by Spokane, Portland and Seattle Railway Company, for a term of 10 years; and acquisition by the former through said lease and during the term of said lease of sole or joint control of carriers subsidiary to or affiliated with the leased road, and of all leasehold trackage joint ownership or joint use rights in any railroad line or lines and terminals incident thereto held by the lessor or its subsidiaries and affiliates; all under the terms and conditions, described in said report on reconsideration, found just and reasonable, be and they are hereby, approved and authorized;

It is further ordered, On reconsideration, that in Finance Docket No. 21479, (1) Chicago, Burlington & Quincy Railroad Company, is authorized to issue not exceeding $70 million principal amount of its First and Refunding 4-percent bonds, due August 1, 2010; and (2) Great Northern Pacific & Burlington Lines, Inc., is authorized to issue (a) not exceeding 17,500,000 shares of the common capital stock without

par value, (b) to issue not exceeding, 3,102,333 shares of its preferred stock, par value $10 each, and (c) issue $71,500,000 principal amount Series A Consolidated Mortgage 4-percent bonds, due October 1, 1984; (d) to assume obligations and liabilities of Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co., and Chicago, Burlington & Quincy Railroad Company and during the term of lease, the obligations and liabilities of Spokane, Portland and Seattle Railway Company, and companies subsidiary to or affiliated with those carriers, including obligations contingently guaranteed solely by them or jointly with other guarantors; (e) to pledge of $71,500,000 principal amount of its Series A Consolidated Mortgage 4-percent bonds, due October 1, 1984, as collateral security under Northern Pacific Collateral Trust Indenture and (f) to modify and alter the status of the Northern Pacific Collateral Trust Bonds through a supplemental indenture thereto which shall become and be binding upon publication or declaration to that effect by the carrier and all upon the terms and for the purposes described in the aforesaid report of the Commission on reconsideration;

It is further ordered, That, except as herein authorized, the aforesaid securities shall not be sold, pledged, repledged, or otherwise disposed of unless so ordered or approved by this Commission;

It is further ordered, That, in Finance Docket No. 21480, the present and future public convenience and necessity (a) require construction and operation by Great Northern Pacific & Burlington Lines, Inc., of

connecting lines of railroad in Douglas County, Wis., Pine, Stearns, Wadena, Wilkin, Clay, and Polk Counties, Minn., Cass and Grand Bonner County, Idaho, Spokane, Whitman and King Counties, Wash., and Multnomah County, Oreg.; and (b) permit abandonment (1) by Great Northern Pacific & Burlington Lines, Inc., of portions of the lines of railroad of Great Northern Railway Company, in Clay County, Minn., Lewis and Clark County, Mont., Spokane County, Wash., and of Northern Pacific Railway Company in Wilkin County, Minn., and Spokane County, Wash.; and (2) by Spokane, Portland and Seattle Railway Company, as lessor, in Spokane County, Wash.; all in connection with the mergers and lease, as described herein and upon consummation of this transaction with notice hereinafter furnished by the Commission, a certificate shall be issued; *Provided, however*, That this certificate is issued subject to the express condition that the segments of lines authorized to be abandoned may not be abandoned prior to the commencement of operation over the segments of lines authorized to be constructed;

It is further ordered, That Great Northern Pacific & Burlington Lines, Inc., shall not issue any shares of stock herein authorized until the proposed amendment of its certificate of incorporation providing for the reclassification and increase of its capital stock shall have been made effective, and a copy thereof, duly certified by an appropriate public officer, shall be filed with this Commission within 10 days after it is made effective;

It is further ordered, That Great Northern Pacific & Burlington Lines, Inc., shall report to this Commis-

sion, in writing the date the various transactions authorized herein were consummated immediately upon accomplishing such consummation;

It is further ordered, That Chicago, Burlington & Quincy Railroad Company and Great Northern Pacific & Burlington Lines, Inc., shall report concerning the matters involved herein in conformity with the orders of the Commission, division 3, dated May 20, 1964, as amended, respecting applications filed under section 20a of the Interstate Commerce Act (49 CFR 56.4 and 56.6);

It is further ordered, That, Great Northern Pacific & Burlington Lines, Inc., when establishing such changes in tariffs, rates, and charges as may be required in effectuation of the transactions approved herein may do so upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and, in schedules making such changes shall refer to this order by date and docket number;

It is further ordered, That if the authority herein granted is exercised, Chicago, Burlington & Quincy Railroad Company, and Great Northern Pacific & Burlington Lines, Inc., shall submit for consideration three copies of the journal entries required to record the transactions;

It is further ordered, That, unless the merger and lease authority herein granted is exercised within 1

year from the effective date hereof, this order shall be of no force and effect;

It is further ordered, That the jurisdiction of this Commission in these proceedings be, and it is hereby, expressly retained for a period of 5 years from the date of the effectiveness hereof for the purpose of making such further order or orders in these proceedings as may be necessary or appropriate; and

It is further ordered, That recital of balance sheet and other financial data in the report shall not be construed as approving accounting methods which have been followed or expenditures represented thereby, and nothing herein shall be construed to imply any guaranty or obligations as to said securities, or interest or dividends thereon, on the part of the United States.

By the Commission.

H. NEIL GARSON,

Secretary.

(SEAL)

APPENDIX E

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478 [1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided April 11, 1968

On reconsideration, report and order of November 30, 1967, modified with respect to certain conditions contained in appendix L thereto, and affirmed in all other respects. Prior reports 328 I.C.C. 460 and 331 I.C.C. 228.

Appearances as shown in prior report and

Donald F. Turner and *Arthur I. Cantor* for United States Department of Justice.

Thomas H. Ploss for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

SECOND REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the report and order on reconsideration dated November 30, 1967, 331 I.C.C. 228 (reconsideration

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[1] This report also embraces Finance Docket No. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, et cetera, and Finance Docket No. 21480, Great Northern Pacific & Burlington Lines, Inc., et al—Construction and Abandonment.

report), in Finance Docket No. 21478, we found consistent with the public interest and authorized, subject to 35 numbered conditions contained in appendix L to the report, (1) merger of the Great Northern Railway Company (Great Northern), the Northern Pacific Railway Company (Northern Pacific) the Pacific Coast Railroad Company (Pacific Coast) and the Chicago, Burlington & Quincy Railroad Company (Burlington) into the Great Northern Pacific & Burlington Lines, Inc. (Nuco), a new corporation chartered in Delaware for the purpose of becoming a carrier; (2) the resulting acquisition by Nuco of sole or joint control of the merged companies' subsidiaries and of all leasehold, trackage and joint use rights in the lines of other carriers and the terminals incidental thereto possessed by the merging companies; (3) the lease by Nuco of the Spokane, Portland and Seattle Railway Company (Portland Co.) for a period of 10 years; and (4) through the terms of said lease, the acquisition by Nuco of the Portland Co.'s subsidiaries and its leasehold, trackage and joint use rights in the properties of other carriers and terminals incidental thereto. We also approved and authorized, in Finance Docket No. 21479, the incidental stock and security issues, pledges and modifications, and assumption of obligations, and, in Finance Docket No. 21480, the construction of connecting lines and abandonment of trackage, necessary to effectuate the merger.

Authorization for the foregoing transactions had been previously denied by report and order dated

March 30, 1966, 328 I.C.C. 460 (original report). Reconsideration of the original report followed a further hearing to determine the amount of estimated savings resulting from the proposed merger in the light of (1) agreements entered into between the applicants, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), and the Chicago and North Western Railway Company (North Western), and (2) the effect of relevant financial, operational and other changes related to savings, which had occurred subsequent to the closing of the original hearings.

On March 14, 1968, at special meetings called for that purpose, 79.97 percent of Great Northern's shares entitled to vote, 73.20 percent of Northern Pacific's and 99.66 percent of Burlington's were cast in favor of the merger under the conditions we prescribed in the reconsideration report.

Petitions for reconsideration, further hearing, stay of effective date and modification with respect to the reconsideration report have been filed by the Denver and Rio Grande Western Railroad Company (Rio Grande), the Northern Pacific Stockholders' Protective Committee (NPSC), Milwaukee, the Soo Line Railroad Company (Soo), the Union Pacific Railroad Company (Union Pacific) and the Livingston Anti-Merger Committee (Livingston Committee).[2] A supplement to its petition has been filed by Rio

[2] By order dated January 15, 1968, the effective date of the reconsideration order was stayed pending further order.

Grande. Milwaukee has replied to Rio Grande's supplement and to Union Pacific. The Western Pacific Railroad Company (Western Pacific) and Union Pacific have replied to Milwaukee. The applicants and the United States Department of Justice (Justice) have replied to the petitions generally.

Except for the Livingston Committee, none of the petitioners express unqualified opposition to the merger on its merits. However, Justice contends that the various petitions have raised serious questions and, therefore, our decision approving the merger should be reexamined. Milwaukee and Soo request reconsideration of certain conditions in appendix L; namely, conditions 20 and 23 by Milwaukee and condition 26 by Soo. Union Pacific seeks reconsideration of the rejection of evidence it proffered at the further hearing and requests elimination of condition 24(a) prescribed in appendix L for the benefit of Milwaukee. NPSC seeks reconsideration of the rejection of its proposal for organization of a new land company to hold Northern Pacific's nonrail properties and requests the proceedings be reopened to determine the present value of those properties. Rio Grande reiterates its request that authority for the merger be either denied outright or withheld until its effects can be determined in the light of the proceedings involving the consolidation of Milwaukee, North Western and the Chicago, Rock Island & Pacific Railroad Company (Rock Island), now pending in Finance Docket No. 22688, Chicago & North Western Railway Co.—Control—Chicago, Rock Island & Pacific Railroad Co.,

and Finance Docket No. 24182, Chicago, Milwaukee & North Western Transportation Co.—Consolidation —Chicago & North Western Railway Co., and Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

The positions of Rio Grande, NPSC, Union Pacific and the Livingston Committee on the matters they request reconsideration have been discussed in detail in the reconsideration report and will be referred to here only to the extent necessary for clarity in discussion. The position of Justice, which has consistently opposed the merger, was also exhaustively discussed in both the original and reconsideration reports.

PETITIONS FOR RECONSIDERATION

Livingston Committee.—We have carefully considered the Livingston Committee's allegation that the reconsideration report errs (1) by emphasizing the financial stability of the carriers concerned in determining the public interest, instead of the financial stability of cities and States affected by loss of job opportunities, and (2) by not considering the testimony respecting freight service offered at the many hearings held in these proceedings during the past 6 years. However, as the applicants point out, the petitioner in repeated attempts to show that service to the public resulting from the merger will not be improved over present service, persists in comparing the individual applicants' present expedited schedules for short, light-tonnage trains pulled by high-horsepower locomotives, with schedules of normal trains providing general freight service, without taking into con-

sideration the shorter and more efficient routes and more dependable schedules the merger will make possible for the normal trains. There is nothing in the petitioners' argument to establish that even present expedited train service will not be improved as a result of the merger.

Also, the petitioner overlooks the salutary effects of the employee protective agreements (described in the reconsideration report) upon the employees themselves and upon the economy of their localities. Employment is largely guaranteed. No employee will lose his job or be placed in a worse position with regard to his employment as a result of the merger. Protection is also extended to persons on furlough or leave of absence. Elimination of redundant jobs will occur over a period of time and will be solely by normal attrition, i.e., resignation, retirement, death or discharge for cause; and, as a result of the agreements, 661 fewer jobs will be eliminated. Further, the conditions to improve the competitive posture of the Milwaukee and the North Western, the strengthening of the rail system in general and the anticipated improvement in rail service can bring increased employment to the territory. Considering the measures being taken to maintain the area's economy, especially the protection against loss of employment and income, there is no warrant on this record for concluding that the merger would endanger the financial stability of the cities and States in Nuco's area of operation.

Another of this petitioner's assertions lacks evidentiary support, namely, that motor carriers would

not provide effective competition to the merged applicants because trucks cannot maintain schedules on interstate highways during winter months. This assertion tends to overemphasize the unusual and does not detract from the clear evidence of growing motor carrier competition.

Our opinion, based on the very extensive record compiled in these proceedings, continues to be that the merger of the applicants is a "means for achieving, through appropriate conditions, overriding benefits to the public through improved transportation" (331 I.C.C. 228, at page 389).

Union Pacific.—This petitioner opposes condition 24(a) of appendix L, which condition was found in both the original and the reconsideration report to be required before the merger could be approved. The condition is designed to strengthen competition against the merged system by providing Milwaukee, for the first time, access to Portland, Oreg., with provision for grant by Nuco of the trackage rights necessary to accomplish such purpose.

During the original hearing Union Pacific estimated potential loss of revenue from Milwaukee's entry into Portland at $1.1 million, or less than ¼ of 1 percent of its system operating revenue; an amount found in the reconsideration report, at page 283, that "would neither have a deleterious effect on service to the public nor outweigh the many substantial public interest considerations which favor the Milwaukee's direct access to Portland." At the further hearing, Union Pacific proffered evidence to update its estimate

of adverse effect and made an offer of proof estimating a loss of revenue in excess of $1.77 million.[3] This was rejected by hearing examiner as beyond the limited scope of the further hearing. The hearing examiner's ruling was affirmed in the reconsideration report, at page 241. Union Pacific now contends the limited scope of the further hearing was prejudicial to its interest, and a denial of due process, that its proffered evidence should be admitted, with provision for such further hearing as may be necessary in conjunction therewith, and that condition 24(a) should be eliminated. As its sole ground for requesting reconsideration the petitioner adopts, by reference, the arguments contained in its brief on further hearing. These arguments were duly considered in arriving at our decision in the reconsideration report. Therefore, in the absence of any new and material argument with respect to the matters complained of by Union Pacific there is no cause shown for reconsidering our conclusions in the reconsideration report on such matters.

NPSC.—Like Union Pacific, NPSC, which represents about 3 percent of Northern Pacific's stockholders and about 5 percent of that applicant's shares, stresses arguments it previously advanced and we dis-

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[3] Even if established, this loss of revenue would still be less than 1/3 of 1 percent of the $589.14 million system railway operating income Union Pacific report in its 1966 annual report to this Commission. Such a small additional loss of revenue could not materially affect our previous finding as to the impact of condition 24 upon the petitioner.

posed of in the reconsideration report. This petitioner's position, as described in the reconsideration report, is that because of Northern Pacific's extensive nonrail properties, the ratios agreed upon by the applicants for the exchange of their respective common stock were improperly arrived at, and that prior to consummation of the merger a separate land company controlled by present Northern Pacific stockholders should be organized to hold the nonrail properties of Northern Pacific. The petitioner's current request for reopening the proceedings to determine the value of the nonrail properties is its third request for such purpose. We note that in the stockholder voting of March 14, 1968, 96.6 percent of the Northern Pacific shares voted were cast in favor of the merger as approved by the Commission.

Other than a minor misstatement of fact to the effect that expenses of organizing the new land company would be met by Northern Pacific, whereas NPSC actually proposes that they would be borne in the new land company itself, we find no error in our disposition in the reconsideration report of this petitioner's contentions. The misstatement of fact is not, of course, sufficiently serious as to warrant reconsideration of our previous decision or the further hearing desired by the petitioner.

Rio Grande and Justice.—Rio Grande, as pointed out in the reconsideration report, offered no evidence prior to the further hearing and freely admits that it should have participated in the initial stages of these proceedings. At the further hearing it con-

tended, for the first time, that it will be damaged by the proposed merger itself and that this damage will be magnified when measured in conjunction with the other major consolidation proposals now pending. It argues that we should consider together the instant merger and the proceedings involving North Western, Milwaukee, and Rock Island, *supra*, since once a consolidation has been approved and consummated, the carriers involved therein have no incentive to be responsive to the needs of adverse parties. It further argues that the proposal it advanced on petition following close of the further hearing (and discussed and rejected in the reconsideration report) for another hearing to determine the "crossover" effects of the instant merger and the North Western-Milwaukee-Rock Island proceedings during the period between our approval of the merger and consummation thereof, will provide the atmosphere for negotiation which will strongly encourage settlements among carriers; and that the reservation of jurisdiction contained in condition 33 of appendix L is ineffective to permit Rio Grande, or any other carrier in the territory affected by the merger, to seek relief from the cumulative effects or crossover problems of this and the other consolidations.[4]

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[4] This condition provides:

33. The Commission shall retain jurisdiction over these proceedings for a period of 5 years following consummation of the transactions herein authorized, for the purpose, among others, of considering petitions, under section 5(2)(d) of the act, by any railroad in the territory involved requesting

[Footnote continued on next page]

Other contentions of the petitioner are that the Commission erroneously found that the policy of the Interstate Commerce Act is to facilitate and thereby foster and encourage consolidation which can be shown to be consistent with the public interest; that it was erroneously denied an opportunity to present evidence of injury from the proposed merger; that the decision on reconsideration is not supported by the evidence submitted by the applicants as to the extent of the savings resulting from the merger; that finding that Burlington is an integral part of the merger is unjustified; and that finding the merger in the public interest despite its effects on competition, is irreconcilable with the finding in the original report that the destruction to competition was so great, that the merger would not be consistent with the public interest even if properly conditioned. The petitioner claims to find proof of the adverse effects it alleges, in the petition of Milwaukee, hereinafter discussed, for mod-

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[4] Continued
inclusion of the merger so authorized. The Commission shall also retain jurisdiction over these proceedings for a period of 5 years following consummation of the transaction herein authorized to impose such just and reasonable conditions upon petition by any party in interest, or on its own motion, after hearing, as may be necessitated by any cumulative or crossover problems stemming from approval of this merger and any other transaction authorized under section 5 with respect to the territory involved. Consummation of the transactions herein authorized shall constitute irrevocable assent by applicants to the power of this Commission to impose, after hearing, such just and reasonable conditions as may be necessary or appropriate.

ification of the condition in appendix L requiring solicitation of traffic for the central overland routes.

Justice, in reply, is in substantial agreement with Rio Grande. It too cites as error the change in our findings regarding the effects on competition. It agrees with Rio Grande that condition 33 does not afford sufficient protection to that petitioner; that the crossover problems of this and the other Western mergers should be examined and resolved before the instant merger is consummated; that insufficient consideration has been given its repeated requests for additional evidence respecting savings to be realized from the merger and the effects of the conditions agreed upon by the applicants, Milwaukee and North Western; and that Rio Grande should have been permitted to introduce into the record, the evidence it proffered a further hearing. Justice believes the public interest would be served if we would grant the various petitions for reconsideration and reconsider our position.

We recognized in the reconsideration report that after decisions are reached in other proceedings some modifications or adjustments in this proceeding may be necessary for Rio Grande or others. Accordingly, condition 33 was imposed as an antecedent for this eventuality. We remain convinced that nothing Rio Grande now argues in favor of additional hearings or the receipt of its rejected evidence justifies the delay, which would thereby ,result in affording to the applicants' shippers the many benefits from a merger we have found consistent with the public interest. Cf. *Pennsylvania R. Co.—Merger—New York Central R.*

Co., 328 I.C.C. 304, 318 (*Penn-Central* case).[5] Rio Grande's arguments with respect to the rejection of its proffered evidence, the inclusion of Burlington in the merger, projected savings from the merger and additional hearings on crossover effects before the merger can be consummated are essentially the same as those discussed in the foregoing points and rejected in the reconsideration report. The same can be said for the arguments of Justice, respecting merger savings and the agreements on protective conditions entered into by the applicants, Milwaukee and North Western. No justification has been shown by either Rio Grande or Justice for conclusions on these matters different from those arrived at in the reconsideration report.

The findings in the reconsideration report regarding competition admittedly differ from those in the original report. However, as we stated in the reconsideration report (at page 289) we no longer view the preservation of competition between the applicants in the northern tier States as the dominant factor in our decision or an invincible impediment to this merger. Satisfied that, by the imposition of appropriate conditions, the competitive ability of Milwaukee and North Western will be strengthened and that, by the attrition agreements, adverse effects on railway labor will be ameliorated, we remain convinced that these

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[5] The *Penn-Central* case is also reported at 327 I.C.C. 475 and 330 I.C.C. 328.

and other public interest factors of record were and are adequate to warrant our conclusion in the reconsideration report that the merger would now be consistent with the public interest.

The perspective with which we appraised competition in the reconsideration report and the construction we placed on section 5 as to its underlying purpose, are no longer open to question in view of the Supreme Court's decision on these matters in *Penn-Central Merger Cases*, 389 U.S. 486 (1968). See in particular the Court's comments as follows at pages 492-493 and 499-500:

> The merger and the inclusion orders are part of a vast reorganization of rail transportation implementing the congressional policy of encouraging consolidation of the Nation's railroads into a "limited number of systems." * * * That policy has been with us, in one form or another, for more than 45 years. The original idea of the 1920 Act, that the I.C.C. would formulate a national plan of consolidation, proved unworkable. It ran into heavy opposition from carriers and eventually had to be abandoned. The 1920 Act was replaced by the Transportation Act of 1940 * * * section 5(2)(b) which governed the Commission's examination of the present transactions. Under the 1940 Act, the initiation of merger and consolidation proceedings is left to the carriers themselves, and the Commission possesses no power to compel carriers to merge. However, the congressional directive for a limited number of railroad systems has not been changed.

The only change has been in the means of achieving that goal. See generally *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298, 315-321 (Appendix) (1954).

* * * *

It is, of course, true that the policy of Congress, set forth in the Transportation Act, to consolidate the railroads of this Nation into a "limited number of systems" is a variation from our traditional national policy, reflected in the antitrust laws, of insisting upon the primacy of competition as the touchstone of economic regulation. Competition is merely one consideration here. See *Seaboard Airline R. Co.* v. *United States*, 382 U.S. 154 (1965).

Rio Grande's competitive position relative to the applicants in these proceedings is somewhat analogous to that of the Reading Company (Reading) in the *Penn-Central* case, *supra*. In that case we twice refused to reopen the proceeding to receive evidence of traffic diversion resulting from the Penn-Central merger which Reading, although entitled to do so, had not attempted to offer at the original hearing. In the *Penn-Central Merger Cases*, *supra*, at page 520, the Supreme Court sustained our "denial of Reading's submission on condition that it is without prejudice to any proceeding which Reading may hereafter institute, based on actual experience, for relief from undue prejudice caused by the merger."

Reading, notwithstanding its affiliation with the Chesapeake & Ohio system, is by most measurements

of corporate financial strength, a marginal carrier;[6] yet the Supreme Court held adequate the protection we accorded Reading in respect to the increasing competition it could anticipate from the newly-formed Penn-Central system. That protection is substantially the same as the protection we are here affording Rio Grande through condition 33. Unlike Reading, the Rio Grande is in sound financial condition having strengthened its operation over the past 40 years from that of a local feeder line to that of a vigorous contender for central corridor trunkline traffic in competition with its giant adversaries on the Southern Pacific-Union Pacific route. See *Central Pacific Ry. Co. Control,* 317 I.C.C. 469 and 328 I.C.C. 345. No less than in the case of the Reading, it is our opinion that the plan embodied in condition 33 is adequate to protect the competitive position of the Rio Grande.

Rio Grande complains that, because of court litigation or other delaying factors it anticipates, a considerable time will transpire before the western con-

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[6] Their respective annual reports (Rail Form A) for the year 1966 show: miles of road operated, Rio Grande 1,279 mainline and 882 branchline, Reading 821 mainline and 410 branchline; current assets as of December 31, 1966, Rio Grande $37,433,872, Reading $28,620,331; current liabilities as of the same date, Rio Grande $19,836,415, Reading $26,-714,790; long-term debt due within 1 year, Rio Grande $3,-602,122, Reading $6,589,431; long-term debt due after 1 year, Rio Grande $81,719,808, Reading $125,588,048; net railway operating income, Rio Grande $14,939,990, Reading $7,732,066; total fixed charges, Rio Grande $3,444,690, Reading $6,622,574; net income after fixed charges and other deductions, Rio Grande $12,895,409, Reading, $1,733,320.

solidation cases will be concluded, thus an aggrieved party will be unable to obtain relief from the adverse effects of the consolidations for many years. However, as the applicants point out in reply, Rio Grande overlooks the fact that crossover effects, if any, would not come into being until after consummation of one or more of the other consolidations. The period of "many years," to which Rio Grande alludes, is the period prior to consummation of the other consolidations and any crossover effects will be nonexistent during these years.

In view, however, of the extensive and lengthy litigation which has been characteristic of territorial rail realignments such as that now taking place in the western part of the country, the 5-year period of condition 33 may not provide sufficient time to carry out the purpose of that condition. We shall, therefore, modify the condition by reserving jurisdiction to alter the period if and when a change is shown to be necessary or appropriate, so that the period during which relief may be sought thereunder will be 5 years or such other period as the Commission may, for good cause shown, hereafter prescribe.

In our opinion, this modification will not impose an undue burden upon the applicants, or in any other way render this merger inconsistent with the public interest. At the same time it should further the congressional policy toward the consolidation of the Nation's railroads.

Condition 33 of appendix L in the reconsideration report is hereby modified by inserting after the word

"authorized" on lines 2 and 7 of said condition, the following qualification:

> or such other period as the Commission, for good cause shown, may hereafter prescribe,

Milwaukee.—This petitioner requests elimination of condition 20 of appendix L. Subparagraph (a) of the condition, as set out in detail in the reconsideration report, requires Milwaukee, on traffic moving between points on its lines in Illinois, Missouri, Iowa, Wisconsin, Michigan, and Kansas, on the one hand, and points in California north of Caliente and Santa Margarita, on the other, to join with its connections (1) to maintain schedules and service via the various central transcontinental routes at least equal in all respects to those maintained by Milwaukee via any of the northern routes and (2) to maintain rates on bases no less favorable via the central routes than those maintained via any of the northern transcontinental routes and (3) to secure by active solicitation the routing of the maximum of freight traffic via the central transcontinental routes and to route all unrouted traffic via those routes.

Subparagraph (b) of the condition provides that on traffic moving between the Midwestern States referred to above and points in Oregon, Washington, and British Columbia, Milwaukee must maintain a parity of rates via the central route as with its own northern line.

Milwaukee alleges that condition 20, as it is presently imposed, would destroy most of the competitive

vitality Milwaukee would otherwise gain through the conditions imposed in the reconsideration report for such purpose; that although Western Pacific (which drafted condition 20 and proposed its imposition in the reconsideration order) has been aware of Milwaukee's request for conditions throughout this proceeding, it did not propose condition 20 until its brief on reconsideration was filed, and thus the condition's impact on Milwaukee is not of record, its consistency with the public interest has not been established and Milwaukee has been afforded only a very limited opportunity (approximately 5 minutes during oral argument before us) to reply; that Milwaukee has no control and little influence over the schedules and services maintained by the several components of the central routes, yet it would be held solely responsible for maintaining at least equal schedules and services via the entire route when compared with its own northern route; that Milwaukee, likewise, would be held solely responsible for maintaining a parity of rates via the entire central route although it operates but a fourth of the route; and that Milwaukee would be compelled to solicit away from its own northern route and, to secure maximum traffic over the central route, would have an absolute duty to route all unrouted traffic away from its own northern route.

Milwaukee argues that simple inaction on the part of any of its central route connections would defeat any novel rate proposal Milwaukee may establish on its own northern route; that Union Pacific, a component railroad of the central route, to oppose Mil-

waukee's entry into Portland pursuant to condition 24, could find it convenient and useful to decline to join a lower rate to equal a Milwaukee-instigated northern route rate on traffic to and from Portland, which Union Pacific reaches with its own route from Omaha, thereby defeating the northern route rate; that should Nuco choose to lower any rate between the Pacific Northwest and Chicago, Milwaukee, under the present condition 20, could not meet the competition without offering the same rate basis to its central route connections, any one of which could defeat the move and thus end any semblance of northern corridor competition; and that without the competitive spur of northern rate innovations provided by Milwaukee, neither the applicants herein nor the present central route carriers would be inclined to disturb the present status of central route-northern route competition.

Although urging that deletion of condition 20 in its entirety is the proper solution of the problem, Milwaukee indicates that it will not object to the imposition of an alternate condition 20 which it offers. This condition is assertedly reworded to (1) preclude downgrading of Milwaukee's service and schedules via its central route lines; (2) require active Milwaukee cooperation with its central route connections in maintaining joint through rates comparable to those prevailing on its northern line; (3) continue the flow of traffic via the central route to and from northern California points; and (4) preclude the "hamstringing" of Milwaukee in providing active competition

with Nuco on traffic to and from the Pacific Northwest. The applicants support Milwaukee's position with respect to condition 20.

Union Pacific, in reply, contends that the necessity for condition 20 is made even more imperative because of condition 24 which, as heretofore stated, it opposes because of the entry into Portland thereby gained by Milwaukee. It agrees with Milwaukee, however, that condition 20 as now worded places the sole burden of maintaining central route service and rates on Milwaukee. It admits that condition 20 should be amended; but only to the extent of requiring Milwaukee to merely "offer" to join with central route connections in maintaining schedules, services and rates equal to, or no less favorable than, northern route schedules, services and rates. As so amended, the condition, it argues, should be retained.

Western Pacific contends that without condition 20 the strengthening of Milwaukee as a northern corridor carrier will be accomplished by diverting northern California traffic from the central routes in favor of Milwaukee's northern route. It argues that the Supreme Court ordered the Southern Pacific Company to divest itself of control of the Central Pacific Railway Company in *United States* v. *Southern Pacific Co.*, 259 U.S. 214 (1922) in order to prevent the diversion of central route traffic and that we sought the same objective in denying to both Southern Pacific and The Atchison, Topeka and Santa Fe Railway Company authority to acquire control of Western Pa-

cific in *Southern Pac. Co.—Control—Western Pac. R. Co.*, 327 I.C.C. 387.[7]

Both Western Pacific and Union Pacific assert that condition 20 is necessary under the same reasoning applied in *Central Pacific Ry. Co. Control*, 76 I.C.C. 508, and, like the conditions prescribed in that case, condition 20 is designated to protect the normal flow of traffic via the central route from diversion to more circuitous routes.[8]

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[7] Control of Central Pacific by Southern Pacific was authorized by the Commission under section 5 of the Interstate Commerce Act on February 6, 1923, in *Central Pac. Ry. Control*, 76 I.C.C. 508. Jurisdiction to authorize consolidation of common carriers was conferred upon the Commission for the first time by the Transportation Act, 1920, during the Court's consideration of the antitrust case against Southern Pacific cited by Western Pacific. Prior to the enactment of this enabling legislation in 1920, railroad consolidations were generally prohibited by the individual States and viewed by the courts, State and Federal, as violating the antitrust laws.

[8] To overcome the Court's objection to Southern Pacific acquiring the central route Central Pacific Railway Company while at the same time possessing its own long-haul southern route to most of the same midwest gateways served via Central Pacific, the Commission, in the *Central Pacific Control* case, required Southern Pacific to solicit, from its own territory, traffic via the lines of Union Pacific and Central Pacific through the central route. This requirement was later modified, in *Central Pacific Ry. Co. Control*, 328 I.C.C. 345, to require Southern Pacific solicitation for all central route railroads. The Commission's decision was sustained in *Southern Pacific Company* v. *United States*, 277 F. Supp. 671 (D. Neb., 1967), appeal pending No. 1159, October Term, 1967.

Although agreeing with Union Pacific as to the necessity for condition 20, Western Pacific disagrees as to the responsibility of Milwaukee under the condition. Where Union Pacific admits that the condition as now worded requires Milwaukee to guarantee the equality of central route services and rates over which it has no control and suggests removal of such requirement, Western Pacific contends the condition, as now worded, requires only good faith on Milwaukee's part and that if the failure to establish or maintain the described equality lies with Milwaukee's connections—not Milwaukee itself—then the condition is satisfied. Likewise, it contends, the failure of connections to accept an offer to join in central route rates no less favorable than northern route rates would not preclude Milwaukee from going ahead with the publication of any proposed adjustment. According to Western Pacific, condition 20 will actually benefit Milwaukee by protecting the latter's northern route connections with northern California carriers, which, in order to protect their own long haul might, in the absence of the condition, refuse to join Milwaukee rates via the northern route.

Upon reconsideration of condition 20, and considering the arguments against its imposition which Milwaukee, on petition, has been able to fully expound for the first time, we believe that it will unduly constrain Milwaukee's transcontinental operations. We agree with Milwaukee and Union Pacific that, as now worded, condition 20 will impose upon Milwaukee the definite responsibility of maintaining central and

northern route competition. We also agree with Milwaukee that this fact, coupled with the mandatory solicitation provisions of the condition, might well destroy Milwaukee's northern route as a factor in competition for traffic to and from northern California and negate our intention that Milwaukee will become a "ratemaking transcontinental railroad" and a "meaningful transcontinental competitor" of the applicants (reconsideration report at pages 286 and 273). Because Union Pacific would retain the mandatory solicitation provisions of the condition, not even the amendment it offers will permit Milwaukee to provide the strong competition to the merged systems of the applicants that we have found necessary. If the present wording of condition 20 is retained, Milwaukee's solicitation efforts must be directed to the benefit of central route carriers rather than to pursuading traffic to forsake long-established routes in favor of Milwaukee's own newly-established transcontinental route. Milwaukee, for lack of power to generate traffic for its route, would thus be precluded from creating a viable northern route as a competitor to the present routes of the applicants. We found in both the original and reconsideration reports that creation of strong competition from Milwaukee would be, among other factors, an essential predicate to the conclusion that applicants' merger would be consistent with the public interest (331 I.C.C. 228, at pages 280-281) and there has been nothing presented herein by either Western Pacific or Union Pacific which would warrant a finding to the contrary.

We are mindful that the opportunities for eliminating a central route presented in the control of Central Pacific by Southern Pacific and the proposed control of Western Pacific by either Southern Pacific or Santa Fe were, among other things, responsible for the Supreme Court's divestiture order and the Commission's mandatory solicitation conditions in the *Central Pacific* case, and our denial in the *Western Pacific* case, *supra*.

The peril to the central routes in those cases arose, however, through the ownership of a well-established long-haul route of proven proficiency by a carrier seeking to acquire a short-haul central route carrier over which it would have a life-and-death power. The acquiring carriers were in a position of strength, free from fear of retaliation by central route competitors.

Here, the Milwaukee does not occupy a position of redoubtable strength as a competitor in either the central or northern corridor. It has not the status of a ratemaker on transcontinental traffic. It does not, in this proceeding, seek to acquire a vital link in the central corridor through control of a carrier which it might subvert to its own ulterior purpose. And, as pointed out on brief by Western Pacific, the Milwaukee is highly vulnerable to retaliatory action by central corridor railroads.

What is being sought by the Milwaukee is an opportunity, through our imposition of the several conditions upon the applicants, to develop an effective long-haul route. Those conditions are based on our conclusion that the public interest would be served if

the Milwaukee were to become a ratemaking competitor of the Northern Lines on transcontinental traffic. But even as such a competitor, it would not be in a position to dry up a central route or deliver a fatal blow to the central corridor or any of its carriers. For it now serves merely as a feeder line to various central route carriers at Omaha-Council Bluffs or at Kansas City;[9] and those carriers have multiple options for their protection: they may retaliate in kind as to traffic interchanged with the Milwaukee; they have access to other connecting carriers at the interchange points; they have recourse to the Commission under the terms of condition 20 which we are impos-

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[9] At these points the Milwaukee interchanges traffic with Union Pacific, Rock Island, Burlington, or Missouri Pacific. Further interchange on these routes is at Denver or Pueblo with Rio Grande or Union Pacific, and again at Ogden or Salt Lake City with Southern Pacific or Western Pacific. All of these central route connections possess a far greater power of retaliation against Milwaukee than was available to the connections of Central Pacific and Western Pacific for use against Southern Pacific or Santa Fe in the *Central Pacific* and *Western Pacific* cases. Rock Island, Burlington and Missouri Pacific possess their own direct routes to Chicago by means of which it would be possible to entirely deny Milwaukee's participation in Western Pacific, Southern Pacific or Rio Grande traffic. To accomplish the same purpose, Union Pacific has alternate routes between Omaha and Chicago via Illinois Central, North Western, Rock Island, Burlington and Great Western. From Kansas City it can reach Chicago via Rock Island, Santa Fe, and Missouri Pacific. We make no suggestion as to whether these alternate routes would be as efficient as the present arrangements with Milwaukee; we cite them solely to indicate a source of the power in the hands of central route carriers to retaliate against the Milwaukee for diversion of central corridor traffic.

ing; and, if necessary, they may seek further protection under our retained jurisdiction to reexamine the situation in the light of experience.

An additional consideration in the *Central Pacific* case, but not present here, was the need for continued implementation of the Pacific Railroad Acts.[10] There is no allegation that enhancement of the Milwaukee's competitive position on its northern transcontinental route would be inconsistent with the purpose of those acts, nor is there record support for such a proposition. In sum, the resemblance between the Milwaukee situation here and the facts in the *Central Pacific* and *Western Pacific* cases is entirely superficial, and the rulings in those cases are not applicable here.

As previously stated, during the original hearing, without any consideration being given to the effect of condition 20, which had not then been proposed, Union Pacific estimated its potential loss of revenue from Milwaukee's northern route at less than ¼ of 1 percent of its system revenues, an amount we have found would not significantly affect Union Pacific's ability to provide adequate service to its territory. The record is silent as to the effect on Western Pacific. However, Milwaukee's request for conditions permitting establishment of its northern route was pressed from the very outset of these proceedings. Western Pacific had ample opportunity during the original

[10] 12 Stat. 489 and 13 Stat. 346, enacted in 1862 and 1864, respectively. These acts provide for the operation of Union Pacific and Ceneral Pacific as one continuous railroad without discrimination against one another or other railroads.

hearing, on brief thereafter, and on exceptions to the hearing examiner's report which recommended granting Milwaukee's request, to introduce into the record evidence of the anticipated adverse effect upon its line resulting from Milwaukee's northern route. Nonetheless, it failed to request condition 20 or otherwise manifest any concern regarding Milwaukee's competition until the very last minute.

Giving consideration to the concern of these carriers, it is our opinion that the operation by Milwaukee of a northern route will not impair the ability of either Western Pacific or Union Pacific to perform common carrier service via the central route and on reconsideration we find that the necessity for imposition of condition 20 in its present form is not established, that the condition is not just and reasonable and that it is contrary to the public interest and the national transportation policy. We believe, however, that so long as the competitive vitality of Milwaukee's northern route is not impaired to the point where the instant merger would not be in the public interest, some protection can be afforded the central route carriers with which Milwaukee connects. The alternate condition proposed by Milwaukee appears adequate for this purpose. Therefore, the reconsideration report is hereby modified by deleting therefrom the present condition 20 of appendix L and substituting for the deleted condition the following:

> 20. The Milwaukee, as a condition to its securing various gateways and trackage rights herein:

With respect to freight traffic moving from, to, or via any point located on its lines (or which in the future may be located on its lines or the lines of its successor as a result of merger, or consolidation, or trackage rights, or lease, or an extension of line) in Illinois, Missouri, Iowa, Wisconsin, Michigan, and Kansas, on the one hand, and, on the other, points in California north of and including Caliente and Santa Margarita, shall, to the extent it has control, join with its connections in maintaining via the various central transcontinental routes,

(1) freight train schedules and service at least equal to such schedules and service as are maintained today, and comparable to the freight train schedules and service contemporaneously maintained by the Milwaukee and its connections between such territories via any of the northern transcontinental routes; and

(2) joint through rates on bases no less favorable than those which the Milwaukee shall maintain via any of the northern transcontinental routes.

This condition shall be construed as only requiring Milwaukee to adjust its schedules, service or rates on a proportional basis as related to its length of haul or divisions and in the event its connections refuse to enter into or provide for such joint rates, schedules or service, nothing contained in this condition shall prevent Milwaukee from adjusting its rates, schedules, or service via its northern transcontinental routes.

Milwaukee also requests that condition 23 of appendix L to the reconsideration report be modified by

naming therein all of the 11 gateways required by the reconsideration report to be opened to Milwaukee. No objection has been made to the modification of condition 23 sought by Milwaukee and the modification is supported by the applicants. Accordingly, the reconsideration report will be hereinafter modified to designate the gateways inadvertently omitted from the present condition 23.

Soo.—On petition, Soo points out that the reconsideration report stated that the opening of the 11 gateways to Milwaukee, referred to in the preceding paragraph, would put Milwaukee in a position to close its Twin Cities gateway, which would particularly affect Soo, and that our findings would be conditioned to prevent this contingency. No mention was made in the report, however, with respect to Soo's request that North Western be required to keep its Twin Cities gateway open in connection with traffic it obtains through the opening of the Oakes gateway pursuant to condition 26 of appendix L.

Soo requests that condition 26 be modified to require North Western to keep its Twin Cities gateway open to Soo. The applicants support Soo's request. North Western raises no objection and since it is our intention that the gateway remain open to Soo, even though we inadvertently omitted reference to such intention, the reconsideration report will be modified in accordance with Soo's request.

As modified, conditions 23 and 26, with modification in italics, provide as follows:

23. Nuco shall publish and file appropriate tariffs and routing schedules to be effective on and after the date of consummation of the merger, providing for the opening of junctions and gateways at Linton and Fargo, N. Dak., and *Miles City, Judith Gap, Great Falls, Bozeman, Butte,* and Missoula, Mont., and Spokane, Seattle, and Tacoma, Wash., with respect to traffic moving through said junctions, at the lowest applicable rates available via the Twin Cities and Sioux City gateways (on a reciprocal basis, with the Milwaukee affording equal privileges to Nuco) with just and reasonable divisions thereof as may be agreed upon, or fixed by this Commission if such carriers cannot so agree, and the Milwaukee shall, on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open in similar manner its junctions at Twin Cities, Sioux City, and Council Bluffs with North Western, and on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open in similar manner its junction at Twin Cities with Soo Line.

* * * *

26. Nuco shall (1) establish and maintain competitive joint rates and routes with North Western, reciprocally, on a reasonably related divisional basis (a) via Oakes, N. Dak., as specified in sheet 3 of appendix N-9 of the examiner's report in F. D. No. 21478, with exceptions and upon terms as mutually agreed upon between said railroads, and (b) via Crawford, Nebr., as specified in sheet 4 of appendix N-9 of the examiner's report in F. D. No. 21478, with excep-

tions and upon terms as mutually agreed upon by said railroads, to the extent that Great Northern, Northern Pacific, or Burlington now have or to the extent that Nuco shall have joint rates and routes (a) via Laurel-Billings, Mont., through Crawford and Ellsworth, Nebr., or (b) on traffic moving from or to former Burlington lines in Montana, Wyoming, and South Dakota through Alliance, Nebr., (2) maintain connecting service schedules and interchange service at Oakes and Crawford so as to provide an efficient and effective service to the shipping public, (3) maintain efficient and effective service between Oakes, N. Dak., and Jamestown, N. Dak., for through traffic which is reasonably consistent with the service, including schedules provided by North Western between Huron, S. Dak., and Oakes, N. Dak., and (4) pick up and set out through cars (originating or terminating at points beyond Edgemont, S. Dak., or Alliance, Nebr.) at Crawford in its through trains so as to provide efficient and effective service on such through traffic; *and North Western shall, on traffic obtained pursuant to this condition, open or keep open in similar manner its junction at Twin Cities with Soo Line.*

The several petitioners' contentions of fact or law not specifically disposed of herein have been considered and found not justified or their resolution not necessary to proper disposition of the petitions.

On reconsideration, we find that (1) the report and order on reconsideration and further hearing dated November 30, 1967, should be modified to correct the minor misstatement regarding the organization ex-

penses for the land company proposed by the Northern Pacific Stockholders' Protective Committee and to modify conditions 20, 23, 26, and 33 of appendix L all as described herein; (2) except to the extent indicated in (1), the material matters set forth in the various pleadings considered here present no error of fact or law with respect to the matters complained of nor adequate cause for reconsideration, rehearing or further hearing; and (3) as modified herein, said report and order on reconsideration and further hearing dated November 30, 1967, is affirmed in all other respects.

An appropriate order will be entered.

CHAIRMAN TIERNEY, dissenting:

While I recognize that the revised conditions 20 and 23 of appendix L improve the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's (Milwaukee) chances, although never great, of becoming a viable transcontinental ratemaking railroad, I adhere to the views set forth in my separate dissenting expression to the report on reconsideration, at 330 I.C.C. 292.

VICE CHAIRMAN BROWN, dissenting:

While several conditions are modified herein, from an overall standpoint the matter remains virtually unchanged. I, therefore, dissent for the same reasons which I stated in the prior report, 331 I.C.C. 228, at pages 297 to 299.

COMMISSIONER HARDIN did not participate.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of April 1968.

Finance Docket No. 21478

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Finance Docket No. 21479

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.—STOCK ISSUANCE, ETC.

Finance Docket No. 21480

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC., ET AL. CONSTRUCTION AND ABANDONMENT

Further reconsideration having been given to the matters and things involved in these proceedings, and the Commission, on the date hereof, having made and filed a second report on reconsideration, which report, the reports of the Commission dated March 31, 1966, 328 I.C.C. 460, and November 30, 1967, 331 I.C.C. 228, and the report of the hearing examiner served August 24, 1964, are made a part hereof:

It is ordered, That the order on reconsideration entered herein on November 30, 1967, be, and it is hereby, modified in accordance with the findings in the said second report on reconsideration;

It is further ordered, That as hereby modified, said order of November 30, 1967, shall remain in full

force and effect and that as modified herein said order of November 30, 1967, shall become effective from and after 15 days from the date of service of this order.

By the Commission.

H. NEIL GARSON,
Secretary.

(SEAL)

APPENDIX F

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478 [1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. —MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided June 17, 1968

On reconsideration, report and order of April 11, 1968, construed with respect to certain conditions contained in appendix L of the report and order of November 30, 1967, as modified. Prior reports 328 I.C.C. 460, 331 I.C.C. 228 and 331 I.C.C. 869.

Appearances as shown in prior report.

THIRD REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

The report of the Commission on reconsideration and further hearing, dated November 30, 1967 (331 I.C.C. 228) authorized and approved, with conditions, the merger of Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast

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[1] This report also embraces Finance Docket No. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, et cetera, and Finance Docket No. 21480, Great Northern Pacific & Burlington Lines, Inc., et al—Construction and Abandonment.

Railroad Company, and Chicago, Burlington & Quincy Railroad Company, the merged company to be known as Great Northern Pacific & Burlington Lines, Inc. (NuCo). Condition 23 (331 I.C.C. at pages 356-375, as corrected in 331 I.C.C. at page 887) provides as follows:

> NuCo shall publish and file appropriate tariffs and routing schedules to be effective on and after the date of consummation of the merger, providing for the opening of junctions and gateways at Linton and Fargo, N. Dak., and Miles City, Judith Gap, Great Falls, Bozeman, Butte, and Missoula, Mont., and Spokane, Seattle, and Tacoma, Wash., with respect to traffic moving through said junctions, at the lowest applicable rates available via the Twin Cities and Sioux City gateways (on a reciprocal basis, with the Milwaukee affording equal privileges to NuCo) with just and reasonable divisions thereof as may be agreed upon, or fixed by this Commission if such carriers cannot so agree, and the Milwaukee shall, on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open in similar manner its junctions at Twin Cities, Sioux City, and Council Bluffs with North Western, and on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open in similar manner its junction at Twin Cities with Soo Line.

The applicant railroads publicly announced their intention to consummate the merger on May 10, 1968. Accordingly, they filed, to become effective on that date, tariffs and a routing guide to reflect the fact of

merger and to embody compliance with condition 23 and other conditions which we had prescribed in approving the proposed merger. Upon the issuance of a preliminary injunction by the three-judge court in the United States District Court for the District of Columbia, the effective date of the tariff and routing guide was postponed indefinitely.

The tariff and routing guide in effect provide that the 11 gateways which condition 23 would require the merged company to open to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company would not be open on certain grain movements. Milwaukee concurred in the tariff and routing guide. This was the first notice to the Commission that any party to this proceeding construed condition 23 as permitting such a limitation on the opening of the 11 gateways. We cannot acquiesce in such a construction.

Condition 23, and other prescribed conditions to our approval of the merger, embody our purpose to create a strong degree of meaningful intramodal competition not now possible in the affected territory and to promote improvement in transportation services to the shipping and receiving public. 331 I.C.C. 283 and 289. It is clear from our report on reconsideration and further hearing that the elimination of intercarrier routing barriers and the strengthening of Milwaukee were *sine qua non* elements in our approval of the merger. Condition 23 was a Milwaukee proposal which the applicants eventually accepted in their petition for reconsideration of our original disapproval of the proposed merger (328 I.C.C. 460), and embodied in an

agreement with Milwaukee. From the beginning the Commission viewed it as means for according the Milwaukee an opportunity to participate in any traffic through a named junction to or from points on NuCo's lines, as either a bridge or terminating carrier. 328 I.C.C. 498-499; and 331 I.C.C. 280. The applicants themselves may have contemplated that the 11 gateways would be open only on traffic in which they already participated in through routes and joint rates via the Twin Cities and Sioux City gateway, thereby giving Milwaukee an opportunity to obtain longer hauls on traffic in which it already participates. This would exclude grain originating on points served by the merged company because such grain has long moved on flat rates and in single line service to the primary markets of Twin Cities and Sioux City.

Regardless of any understanding the applicants and Milwaukee may have had among themselves, however, or of the interpretation they now put forth as to their agreement, those matters do not bind us and cannot displace our responsibility to condition approval of the merger upon terms required by the public interest. Our understanding of the terms is as stated in our several reports. It was and is our intention in condition 23 to open the 11 enumerated gateways to all traffic—including grain—without regard to the prior applicability of through routes and joint rates.

We note that the bulk of the grain originating in the important producing areas of Montana, North Dakota, and South Dakota served by the applicant railroads moves "via the Twin Cities and Sioux City

gateways," and we did not believe that the benefits of alternative routing via the Milwaukee that was our purpose in imposing condition 23 should be denied the shippers of grain in those States simply because, as the rate structure has evolved over the years, grain moves to these primary markets upon local flat rates. The broad reach of NuCo's lines into these producing areas renders it imperative that Milwaukee be afforded the opportunity to solicit this traffic and that its participation in the grain movements to the primary markets not be limited to grain originating only on its lines. Accordingly, we look upon condition 23 as requiring NuCo and Milwaukee to establish reciprocal through routes and joint competitive rates via the 11 gateways, on grain, including that moving to the primary markets of Twin Cities and Sioux City. This would permit routing of grain, for example, from an origin on the lines of NuCo to one of the 11 new gateways and Milwaukee beyond.

On reexamination, we remain convinced that requiring the merged company to enter into through routes and competitive joint rates on grain moving to the primary markets of Twin Cities and Sioux City via the 11 new gateways will not result in a substantially greater diversion of traffic than the applicants anticipated or than we found to be the probable result of the conditions imposed for the protection and strengthening of Milwaukee. This is important traffic for the applicant railroads. Upon the assumption that after the merger NuCo maintains good service at competitive rates for grain shippers located on their lines, we

conclude that the great majority of such shippers will continue to give a long haul to the carrier upon whom they are dependent for car supply and other elements of service provided by the originating carrier. The availability of alternate competitive routes via Milwaukee will, in fact, be a deterrent against competitive lethargy on the part of the merged company.

The applicants will be expected promptly to revise the tariffs and routing guide in accordance with this report.

CHAIRMAN TIERNEY, VICE CHAIRMAN BROWN and COMMISSIONER HARDIN did not participate.

H. NEIL GARSON,

Secretary.

(SEAL)

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